United Nations

# Report of the International Court of Justice

## 1 August 2009-31 July 2010

## General Assembly

**Official Records**
**Sixty-fifth Session**
**Supplement No. 4**

Please recycle

**General Assembly**
Official Records
Sixty-fifth Session
Supplement No. 4

# Report of the International Court of Justice

**1 August 2009-31 July 2010**

United Nations • New York, 2010

*Note*

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251-8473

[1 August 2010]

# Contents


| *Chapter* | | *Page* |
|---|---|---|
| I. | Summary | 1 |
| II. | Organization of the Court | 9 |
| | A. Composition | 9 |
| | B. Privileges and immunities | 10 |
| III. | Jurisdiction of the Court | 12 |
| | A. Jurisdiction of the Court in contentious cases | 12 |
| | B. Jurisdiction of the Court in advisory proceedings | 12 |
| IV. | Functioning of the Court | 14 |
| | A. Committees constituted by the Court | 14 |
| | B. Registry | 14 |
| | C. Seat | 20 |
| | D. Peace Palace Museum | 20 |
| V. | Judicial work of the Court | 21 |
| | A. General overview | 21 |
| | B. Pending contentious proceedings during the period under review | 22 |
| | 1. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* | 22 |
| | 2. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* | 22 |
| | 3. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* | 23 |
| | 4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)* | 24 |
| | 5. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* | 25 |
| | 6. *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* | 26 |
| | 7. *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* | 28 |
| | 8. *Maritime Dispute (Peru* v. *Chile)* | 30 |
| | 9. *Aerial Herbicide Spraying (Ecuador* v. *Colombia)* | 31 |
| | 10. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)* | 32 |

11. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)* ..... 35

12. *Jurisdictional Immunities of the State (Germany* v. *Italy)* ..... 37

13. *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* ..... 40

14. *Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)* ..... 42

15. *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)* ..... 43

16. *Whaling in the Antarctic (Australia* v. *Japan)* ..... 46

17. *Proceedings jointly instituted by Burkina Faso and the Republic of Niger (Burkina Faso/Republic of Niger)* ..... 47

C. Pending advisory proceedings during the period under review ..... 48

1. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* ..... 48

2. *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development (request for advisory opinion)* ..... 50

VI. Visits to the Court ..... 53

VII. Publications, documents and website of the Court ..... 55

VIII. Finances of the Court ..... 58

A. Method of covering expenditure ..... 58

B. Drafting of the budget ..... 58

C. Budget implementation ..... 58

D. Budget of the Court for the biennium 2010-2011 ..... 58

Annex

International Court of Justice: organizational structure and post distribution as at 31 July 2010 ..... 61

# Chapter I

## Summary

### Composition of the Court

1. The International Court of Justice, the principal judicial organ of the United Nations, consists of 15 judges elected for a term of nine years by the General Assembly and the Security Council. Every three years one third of the seats fall vacant. The next elections to fill such vacancies will be held in the last quarter of 2011.

2. It should, however, be noted that during the period under review, Judge Shi Jiuyong, former President and former Vice-President of the Court, resigned with effect from 28 May 2010. A seat having thereby fallen vacant, the General Assembly and the Security Council on 29 June 2010 elected Xue Hanqin (China) as a member of the Court with immediate effect. Pursuant to Article 15 of the Statute of the Court, Judge Xue will hold office for the remainder of Judge Shi's term, which will expire on 5 February 2012.

3. It should also be noted that another member of the Court, Judge Thomas Buergenthal, announced in May 2010 that he would resign with effect from 6 September 2010. The United Nations fixed 9 September 2010 as the date for the election of his successor. The member of the Court then elected will complete Judge Buergenthal's term, which will expire on 5 February 2015.

4. At 31 July 2010, the composition of the Court was as follows: President, Hisashi Owada (Japan); Vice-President, Peter Tomka (Slovakia); and Judges Abdul G. Koroma (Sierra Leone), Awn Shawkat Al-Khasawneh (Jordan), Thomas Buergenthal (United States of America), Bruno Simma (Germany), Ronny Abraham (France), Kenneth Keith (New Zealand), Bernardo Sepúlveda-Amor (Mexico), Mohamed Bennouna (Morocco), Leonid Skotnikov (Russian Federation), Antônio Augusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom) and Xue Hanqin (China).

5. The Registrar of the Court is Philippe Couvreur, a national of Belgium. The Deputy Registrar of the Court is Thérèse de Saint Phalle, a national of the United States of America and France.

6. The number of judges ad hoc chosen by States parties in cases during the period under review was 23; the associated duties were carried out by 19 individuals (the same person is on occasion appointed to sit as judge ad hoc in more than one case).

### Role of the Court

7. The International Court of Justice is the only international court of a universal character with general jurisdiction. That jurisdiction is twofold.

8. In the first place, the Court has to decide upon disputes freely submitted to it by States in the exercise of their sovereignty. In this respect, it should be noted that, as at 31 July 2010, 192 States were parties to the Statute of the Court and that 66 of them had deposited with the Secretary-General a declaration of acceptance of the Court's compulsory jurisdiction in accordance with Article 36, paragraph 2, of the Statute. Further, some 300 bilateral or multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes arising out of their application or

interpretation. States may also submit a specific dispute to the Court by way of special agreement. Finally, a State, when submitting a dispute to the Court, may propose to found the Court's jurisdiction upon a consent yet to be given or manifested by the State against which the application is made, in reliance on article 38, paragraph 5, of the Rules of Court. If the latter State then accepts such jurisdiction, the Court has jurisdiction and the resulting situation is known as *forum prorogatum*.

9. Secondly, the Court may also be consulted on any legal question by the General Assembly or the Security Council and, on legal questions arising within the scope of their activities, by other organs of the United Nations and agencies so authorized by the General Assembly.

**Judicial developments during the period under review**

10. Over the past year, the number of cases pending before the Court has remained high. Four new contentious cases and one new advisory proceeding (in chronological order below) were initiated before the Court:

*Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)*;

*Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)*;

*Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development (request for advisory opinion)*;

*Whaling in the Antarctic (Australia* v. *Japan)*;

*Proceedings jointly instituted by Burkina Faso and the Republic of Niger (Burkina Faso/Republic of Niger)*.

During the period under review, the Court handed down one judgment and nine orders. It also gave an advisory opinion.[1] Further, it held public hearings in two contentious cases: *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* and *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*. The Court also held public hearings on the question of the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.

11. At 31 July 2010, the number of contentious cases on the docket stood at 15,[2] compared to 13 one year earlier. The contentious cases come from the world over:

[1] Chapter V of the present report contains detailed information on the decisions handed down by the Court and on the opinion it delivered during the period under review.

[2] The Court delivered its judgment in the case concerning the *Gabčikovo-Nagymaros Project (Hungary/Slovakia)* on 25 September 1997. The case nevertheless technically remains pending, given that, in September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment. Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time limit of 7 December 1998 fixed by the President of the Court. The parties have subsequently resumed negotiations over implementation of the 1997 judgment and have informed the Court on a regular basis of the progress made. The Court delivered its judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* in December 2005. The case also technically remains pending, in the sense that the parties could again turn to the Court, as they are entitled to do under the judgment, to decide the question of reparation if they are unable to agree on this point.

six are between European States, three between Latin American States and three between African States, while the remaining three are intercontinental in character. This regional diversity once again illustrates the Court's universality.

12. The subject matter of these cases is extremely varied: territorial and maritime delimitation, diplomatic protection, environmental concerns, jurisdictional immunities of the State, violation of territorial integrity, racial discrimination, violation of human rights, interpretation and application of international conventions and treaties, etc.

13. Cases referred to the Court are growing in factual and legal complexity. In addition, they frequently involve a number of phases as a result of preliminary objections by respondents to jurisdiction or admissibility; the submission of requests for the indication of provisional measures, which have to be dealt with as a matter of urgency; and applications to intervene by third States.

**Main judicial events in respect of contentious cases (in chronological order)**

14. During the period under review, the Ambassador of Honduras to the Netherlands filed an application in the Registry of the Court on 28 October 2009 instituting proceedings by Honduras against Brazil in respect of a "dispute between [the two States] relat[ing] to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations". By a letter of 30 April 2010, Mario Miguel Canahuati, Minister for External Relations of Honduras, informed the Court that the Government of Honduras was "not going on with the proceedings initiated by the [said] Application" and that "the Honduran Government accordingly [was] withdraw[ing] this Application". After noting that Brazil had not taken any step in the proceedings in the case, the President of the Court, in an order of 12 May 2010, recorded the discontinuance by Honduras and ordered that the case relating to *Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)* be removed from the List (see also paras. 217-225 below).

15. On 21 December 2009, Belgium initiated proceedings before the Court against Switzerland in respect of a dispute concerning "the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters ... and the application of the rules of general international law that govern the exercise of State authority, in particular in the judicial domain, [and relating to] the decision by Swiss courts not to recognize a decision by Belgian courts and not to stay proceedings later initiated in Switzerland on the subject of the same dispute". By an order of 4 February 2010, the Court fixed 23 August 2010 as the time limit for the filing of a memorial by Belgium and 25 April 2011 as the time limit for the filing of a counter-memorial by Switzerland in the case concerning *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)* (see also paras. 226-233 below).

16. On 20 April 2010, the Court delivered its judgment in the case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*. In that judgment, the Court found, inter alia, that Uruguay had breached its procedural obligations to cooperate with Argentina and the Administrative Commission of the River Uruguay (CARU) during the development of plans for the "Celulosas de M'Bopicuá S.A." and "Orion (Botnia)" pulp mills, and that the declaration of that breach constituted

appropriate satisfaction. The Court found that "Uruguay, by not informing CARU of the planned works before the issuing of the initial environmental authorizations for each of the mills and for the port terminal adjacent to the Orion (Botnia) mill, has failed to comply with the obligation [to inform CARU] imposed on it by Article 7, first paragraph, of the 1975 Statute [of the River Uruguay]". It also concluded that "Uruguay failed to comply with its obligation to notify the plans to Argentina through CARU under Article 7, second and third paragraphs, of the 1975 Statute". The Court further found that "by authorizing the construction of the mills and the port terminal at Fray Bentos before the expiration of the period of negotiation, Uruguay failed to comply with the obligation to negotiate laid down by Article 12 of the Statute". Consequently, according to the Court, Uruguay had "disregarded the whole of the co-operation mechanism provided for in Articles 7 to 12 of the 1975 Statute". At the same time, the Court held that Uruguay had not breached its substantive obligations, aiming at environmental protection, under the statute of the River Uruguay by authorizing the construction and commissioning of the Orion (Botnia) plant. The Court stated that "Uruguay did not bear any 'no construction obligation' after the negotiation period provided for in Article 12 expired on 3 February 2006, the Parties having determined at that date that the negotiations undertaken within the GTAN [High-Level Technical Group established pursuant to an agreement made on 31 May 2005] had failed". Consequently, "the wrongful conduct of Uruguay could not extend beyond that period". The Court moreover found that Argentina had not substantiated its allegation that Uruguay's decision to carry out major eucalyptus planting operations to supply the raw material for the Orion (Botnia) mill had had an impact not only on management of the soil and Uruguayan woodland, but also on the quality of the waters of the river. It also considered "that Argentina has not convincingly demonstrated that Uruguay has refused to engage in such co-ordination as envisaged by Article 36, in breach of that provision". It further stated that, "in so far as it is not established that the discharges of effluent of the Orion (Botnia) mill have exceeded the limits set by those standards, in terms of the level of concentrations, the Court finds itself unable to conclude that Uruguay has violated its obligations under the 1975 Statute". The Court also found "that no legal obligation to consult the affected populations arises for the Parties from the instruments invoked by Argentina". It noted that Uruguay had undertaken such consultations anyhow. On the basis of the documents submitted by the parties, the Court found that there was "no evidence to support the claim of Argentina that the Orion (Botnia) mill is not BAT [best available techniques] compliant in terms of the discharges of effluent for each tonne of pulp produced". Finally, after thorough consideration of the parties' arguments, the Court concluded that "there is no conclusive evidence in the record to show that Uruguay has not acted with the requisite degree of due diligence or that the discharges of effluent from the Orion (Botnia) mill have had deleterious effects or caused harm to living resources or to the quality of the water or the ecological balance of the river since it started its operations in November 2007". Consequently, on the basis of the evidence submitted to it, the Court determined that Uruguay had not breached its obligations under article 41 of the 1975 statute, which places the parties under an obligation, within their respective legal systems, to prescribe rules and adopt measures "in accordance with applicable international agreements" and "in keeping, where relevant, with the guidelines and recommendations of international technical bodies" for the purposes of protecting and preserving the aquatic environment and

preventing its pollution. The Court rejected all other submissions of the parties (see also paras. 139-150 below).

17. On 31 May 2010, Australia instituted proceedings before the Court against the Government of Japan, alleging that "Japan's continued pursuit of a large scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II') [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and the marine environment". By an order of 13 July 2010, the Court fixed 9 May 2011 and 9 March 2012 as the respective time limits for the filing of a memorial by Australia and a counter-memorial by Japan (see also paras. 234-239 below).

18. Finally, on 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified to the Court a Special Agreement signed in Niamey on 24 February 2009 and having entered into force on 20 November 2009 (see also para. 240 below).

**Main judicial events in respect of advisory proceedings**

19. During the reporting period (1 August 2009-31 July 2010), the Court gave its advisory opinion on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*. The Court found that it had jurisdiction to give an advisory opinion in response to the General Assembly's request and considered that there were no compelling reasons for it to decline to exercise its jurisdiction in respect of that request. In examining the scope and meaning of the question put by the General Assembly, the Court found no reason to reformulate the scope of the question. It did, however, reserve the point concerning the identity of the authors of the declaration of independence. Furthermore, as the General Assembly had asked whether the declaration of independence was "in accordance with international law", the Court considered that its task was to determine whether or not the declaration of independence had been adopted in violation of international law. It stated firstly that general international law contained no applicable prohibition of declarations of independence. Accordingly, it concluded that the declaration of independence of 17 February 2008 did not violate general international law. The Court next considered whether Security Council resolution 1244 (1999) or regulation 2001/9 of the United Nations Interim Administration Mission in Kosovo (Constitutional Framework for Provisional Self-Government), which formed part of the international law which was to be considered in replying to the question, introduced a specific prohibition on issuing a declaration of independence. The Court first ascertained the identity of the authors of the declaration of independence, concluding that they had not acted as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration. Having established the identity of the authors of the declaration of independence, the Court considered whether their act in promulgating the declaration was contrary to any prohibition contained in Security Council resolution 1244 (1999) or the Constitutional Framework. After a careful reading of the resolution, the Court stated that it could not be construed to include a prohibition against declaring

independence and accordingly did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of Kosovo's independence. Hence, the Court concluded, the declaration of independence did not violate Security Council resolution 1244 (1999). Finally, having already determined that the authors of the declaration of independence were not bound by the framework of powers and responsibilities established to govern the conduct of the Provisional Institutions of Self-Government of Kosovo, the Court found that the declaration of independence did not violate the Constitutional Framework. The Court therefore responded to the question put by the General Assembly by stating that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law (see also paras. 241-249 below).

20. A request for an advisory opinion was submitted to the Court on 26 April 2010 by the International Fund for Agricultural Development (IFAD), concerning a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (ILO). By an order of 29 April 2010, the Court decided that IFAD and its member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which had made a declaration recognizing the jurisdiction of the Administrative Tribunal of ILO pursuant to article II, paragraph 5, of the statute of the Tribunal were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. The Court fixed the time limits within which written statements and written comments on those statements could be presented. It further decided that the President of IFAD should transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of ILO which the complainant might wish to bring to the attention of the Court and it fixed the time limits within which any statement and comments by the complainant could be submitted to the Court (see also paras. 250-257 below).

**Perspectives on the sustained level of activity of the Court**

21. The 2009/10 judicial year was a busy one, four cases having been under deliberation at the same time, and the judicial year 2010/11 will also be very full, owing especially to the referral to the Court of four new contentious cases, two applications to intervene by third States in a pending case and one request for an advisory opinion between 1 August 2009 and 31 July 2010.

22. The sustained level of activity on the part of the Court has been made possible by a significant number of steps it has taken over recent years to enhance its efficiency and thereby enable it to cope with the steady increase in its workload. The Court continually re-examines its procedures and working methods; it has regularly updated its practice directions (adopted in 2001) for use by States appearing before it. Moreover, it sets itself a particularly demanding schedule of hearings and deliberations, so that several cases can be under consideration at the same time. By doing so, the Court has been able to clear its backlog of cases.

23. States considering coming to the principal judicial organ of the United Nations can now be confident that, as soon as the written phase of the proceedings has come to a close, the Court will be able to move to the oral proceedings in a timely manner.

**Human resources: establishment of posts**

24. To sustain its efforts, the Court requested, among other things, the establishment of nine P-2 grade law clerk posts for the 2008-2009 biennium. Only three of those nine posts were approved. Yet the creation of the other six posts remained as necessary as ever in order to enable each member of the Court to benefit from personalized legal support and thus to devote more time to reflection and deliberation. The sustained pace of work of the Court could not be kept up without such assistance. The Court thus reiterated its request in its budget submission for the 2010-2011 biennium and it thanks the General Assembly for having approved the establishment of the six posts in question at the end of 2009.

25. As suggested by the Advisory Committee on Administrative and Budgetary Questions, a subsidiary organ of the General Assembly, the Court looked into solutions allowing it to cut its telephone costs and assume responsibility for managing its telecommunications infrastructure. Accordingly, the Court requested the establishment of a telecommunications technician post in the General Service category to manage that new infrastructure; it thanks the General Assembly for having approved the establishment of that post at the end of 2009.

26. In its budget submission for the 2010-2011 biennium, following a security audit carried out in response to an increase in the anti-terrorism alert level in the Netherlands, the Court also sought the establishment of four additional posts to strengthen its existing security team, currently comprising just two staff members in the General Service category. The Court requested the establishment of a P-3 post for a security officer and of three more security guard posts in the General Service category. At the end of 2009, the General Assembly approved the establishment of only one of the additional four posts requested: a security guard post (General Service category). While the Court is grateful to the Assembly for having approved the establishment of that post, it nevertheless reiterates the need for further additional security posts. Thereby the Court will be able, among other things, to strengthen the security team in the performance of its current duties and enable it to confront new technological threats in respect of information systems security.

27. Finally, the Court wishes to inform the General Assembly that, following the Assembly's establishment of a P-3 post of Special Assistant to the Registrar, the post was filled in July 2010. The Registrar was particularly in need of such assistance with his duties since he is required to act both as head of an international administrative service (the Court is the only principal organ of the United Nations not to be assisted by the Secretariat) and as an officer of the court bearing daily responsibility for relations with parties, as well as ensuring the smooth conduct of proceedings and the preparation of case documents and assisting the Court in all aspects of its judicial activity.

**Modernization of the Great Hall of Justice in the Peace Palace, where public hearings of the Court are held**

28. The Court also requested and received from the General Assembly, at the end of 2009, an appropriation of a significant amount for the replacement and modernization of the audio-visual equipment in its historic courtroom (the Great Hall of Justice in the Peace Palace) and nearby rooms (including the Press Room). The spaces will be renovated in cooperation with the Carnegie Foundation, which owns the building. In particular, the appropriation from the General Assembly will

cover the costs of installing information technology resources on the judges' bench, resources which all of the international tribunals have adopted in recent years but which are still lacking at the Court.

**"Promoting the rule of law"**

29. The Court will avail itself of the opportunity furnished by the submission of its annual report to the General Assembly to comment "on [the Court's] current role ... in promoting the rule of law", as the Assembly once again invited it to do in resolution 64/116. In February 2008, the Court completed the questionnaire received from the Codification Division of the Office of Legal Affairs to be used in preparing an inventory. In this connection, it should be kept in mind that the Court, as a court of justice and, moreover, the principal judicial organ of the United Nations, occupies a special position. The Court will recall again this year that everything it does is aimed at promoting the rule of law: it hands down judgments and gives advisory opinions in accordance with its Statute, which is an integral part of the Charter of the United Nations, and thus contributes to promoting and clarifying international law. It also ensures the greatest possible global awareness of its decisions through its publications, its multimedia offerings and its website, which now includes its entire jurisprudence and that of its predecessor, the Permanent Court of International Justice.

30. Members of the Court and the Registrar, as well as the Information Department and the Department of Legal Matters, regularly give presentations on the functioning of the Court, procedure before it and its jurisprudence. What is more, the Court sees a very great number of visitors every year. Finally, it offers an internship programme enabling students from various backgrounds to familiarize themselves with the institution and, indeed, to complement their training in international law.

31. In conclusion, the International Court of Justice welcomes the reaffirmed confidence that States have shown in its ability to resolve their disputes. The Court will give the same meticulous and impartial attention to present and future cases coming before it in the 2010/11 session as it has during the 2009/10 session.

# Chapter II
# Organization of the Court

## A. Composition

32. The present composition of the Court, at 31 July 2010, is as follows: President, Hisashi Owada; Vice-President, Peter Tomka; Judges, Abdul G. Koroma, Awn Shawkat Al-Khasawneh, Thomas Buergenthal, Bruno Simma, Ronny Abraham, Kenneth Keith, Bernardo Sepúlveda-Amor, Mohamed Bennouna, Leonid Skotnikov, Antônio Augusto Cançado Trindade, Abdulqawi Ahmed Yusuf, Christopher Greenwood and Xue Hanqin.

33. The Registrar of the Court is Philippe Couvreur. The Deputy Registrar is Thérèse de Saint Phalle.

34. In accordance with Article 29 of the Statute, the Court annually forms a Chamber of Summary Procedure, which is constituted as follows:

*Members*

President Owada
Vice-President Tomka
Judges Koroma, Buergenthal and Simma

*Substitute members*

Judges Sepúlveda-Amor and Skotnikov.

35. In the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judge Tomka having recused himself under Article 24 of the Statute of the Court, Slovakia chose Krzysztof J. Skubiszewski to sit as judge ad hoc.[3]

36. In the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Guinea chose Ahmed Mahiou and the Democratic Republic of the Congo Auguste Mampuya Kanunk'a Tshiabo to sit as judges ad hoc.

37. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Democratic Republic of the Congo chose Joe Verhoeven and Uganda James L. Kateka to sit as judges ad hoc.

38. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*, Croatia chose Budislav Vukas and Serbia Milenko Kreća to sit as judges ad hoc.

39. In the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, Nicaragua chose Giorgio Gaja and Colombia Yves L. Fortier to sit as judges ad hoc.

40. In the case concerning *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*, the Congo chose Jean Yves de Cara to sit as judge ad hoc. Judge Abraham having recused himself under Article 24 of the Statute of the Court, France chose Gilbert Guillaume to sit as judge ad hoc.

[3] Krzysztof Skubiszewski, President of the Iran-United States Claims Tribunal and judge ad hoc at the Court, passed away on 8 February 2010.

41. In the case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, Argentina chose Raúl Emilio Vinuesa and Uruguay Santiago Torres Bernárdez to sit as judges ad hoc.

42. In the case concerning *Maritime Dispute (Peru* v. *Chile)*, Peru chose Gilbert Guillaume and Chile Francisco Orrego Vicuña to sit as judges ad hoc.

43. In the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*, Ecuador chose Raúl Emilio Vinuesa and Colombia Jean-Pierre Cot to sit as judges ad hoc.

44. In the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*, Georgia chose Giorgio Gaja to sit as judge ad hoc.

45. In the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, the former Yugoslav Republic of Macedonia chose Budislav Vukas and Greece Emmanuel Roucounas to sit as judges ad hoc.

46. In the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)*, Italy chose Giorgio Gaja to sit as judge ad hoc.

47. In the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, Belgium chose Philippe Kirsch and Senegal Serge Sur to sit as judges ad hoc.

## B. Privileges and immunities

48. Article 19 of the Statute of the Court provides: "The Members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities."

49. In the Netherlands, pursuant to an exchange of correspondence between the President of the Court and the Minister for Foreign Affairs, dated 26 June 1946, the members of the Court enjoy, generally, the same privileges, immunities, facilities and prerogatives as heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands (*I.C.J. Acts and Documents No. 6*, pp. 204-211 and 214-217).

50. By resolution 90 (I) of 11 December 1946 (ibid., pp. 210-215), the General Assembly approved the agreements concluded with the Government of the Netherlands in June 1946 and recommended that "if a judge, for the purpose of holding himself permanently at the disposal of the Court, resides in some country other than his own, he should be accorded diplomatic privileges and immunities during the period of his residence there"; and that "judges should be accorded every facility for leaving the country where they may happen to be, for entering the country where the Court is sitting, and again for leaving it"; and that "on journeys in connection with the exercise of their functions, [judges] should, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys".

51. In the same resolution, the General Assembly recommended that the authorities of Members of the United Nations recognize and accept United Nations laissez-passer issued to the judges by the Court. Such laissez-passer have been

issued since 1950. They are similar in form to those issued by the Secretary-General.

52. Furthermore, Article 32, paragraph 8, of the Statute provides that the "salaries, allowances and compensation" received by judges and the Registrar "shall be free of all taxation".

# Chapter III
# Jurisdiction of the Court

## A. Jurisdiction of the Court in contentious cases

53. As at 31 July 2010, 192 States were parties to the Statute of the Court (the 192 States Members of the United Nations).

54. Sixty-six States have now made declarations (many with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Costa Rica, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Slovakia, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The texts of the declarations filed by the above States can be found on the Court's website (www.icj-cij.org), under the heading "Jurisdiction".

55. Some 300 multilateral and bilateral conventions providing for the jurisdiction of the Court are currently in force. A representative list of those treaties and conventions can be found on the Court's website under the heading "Jurisdiction".

## B. Jurisdiction of the Court in advisory proceedings

56. In addition to United Nations organs (the General Assembly and the Security Council, which are authorized to request advisory opinions of the Court "on any legal question", and the Economic and Social Council, the Trusteeship Council and the Interim Committee of the General Assembly), the following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

International Labour Organization

Food and Agriculture Organization of the United Nations

United Nations Educational, Scientific and Cultural Organization

International Civil Aviation Organization

World Health Organization

World Bank

International Finance Corporation

International Development Association

International Monetary Fund

International Telecommunication Union

World Meteorological Organization

International Maritime Organization

World Intellectual Property Organization

International Fund for Agricultural Development

United Nations Industrial Development Organization

International Atomic Energy Agency

57. A list of the international instruments that make provision for the advisory jurisdiction of the Court is available on the Court's website (www.icj-cij.org), under the heading "Jurisdiction".

# Chapter IV
# Functioning of the Court

## A. Committees constituted by the Court

58. The committees constituted by the Court to facilitate the performance of its administrative tasks met a number of times during the period under review; their composition, at 31 July 2010, was as follows:

(a) Budgetary and Administrative Committee: President Owada (Chair), Vice-President Tomka and Judges Keith, Sepúlveda-Amor, Bennouna, Yusuf and Greenwood;

(b) Library Committee: Judge Buergenthal (Chair) and Judges Simma, Abraham, Bennouna and Cançado Trindade.

59. The Rules Committee, constituted by the Court in 1979 as a standing committee, is composed of Judge Al-Khasawneh (Chair) and Judges Abraham, Keith, Skotnikov, Cançado Trindade and Greenwood.

## B. Registry

60. The Court is the only principal organ of the United Nations to have its own administration (see Art. 98 of the Charter). The Registry is the permanent administrative organ of the Court. Its role is defined by the Statute and the Rules of Court (in particular arts. 22-29 of the Rules). Since the Court is both a judicial body and an international institution, the role of the Registry is both to provide judicial support and to act as an international secretariat. The organization of the Registry is prescribed by the Court on proposals submitted by the Registrar and its duties are worked out in instructions drawn up by the Registrar and approved by the Court (see Rules, art. 28, paras. 2 and 3). The Instructions for the Registry were drawn up in October 1946. An organizational chart of the Registry is annexed to the present report.

61. Registry officials are appointed by the Court on proposals by the Registrar or, for General Service staff, by the Registrar with the approval of the President. Short-term staff are appointed by the Registrar. Working conditions are laid down in the Staff Regulations adopted by the Court (see art. 28 of the Rules). Registry officials enjoy, generally, the same privileges and immunities as members of diplomatic missions in The Hague of comparable rank. They enjoy a status, remuneration and pension rights corresponding to those of Secretariat officials of the equivalent category or grade.

62. Over the past 20 years, the Registry's workload, notwithstanding the adoption of new technologies, has grown considerably following the substantial increase in the number of cases brought before the Court.

63. Taking into account the establishment of seven Professional posts and two General Service posts, as well as the conversion of four biennium translator posts in the 2010-2011 budget, the total number of posts at the Registry is at present 114 (compared to 105 one year ago), namely, 58 posts in the Professional category and above (of which 50 are established posts and 8 are biennium posts), and 56 in the

General Service category (of which 53 are established posts and 3 are biennium posts).

64. In accordance with the views expressed by the General Assembly, a performance appraisal system was established for Registry staff effective 1 January 2004; it is due to be revised shortly.

65. The Registry is currently preparing to issue new Staff Regulations for the Registry, based on those which entered into force in the Secretariat in July 2009. In addition, further to the adoption by the United Nations of a new internal system for the administration of justice, in which the United Nations Appeals Tribunal has replaced the United Nations Administrative Tribunal, the Court, which had recognized the jurisdiction of the latter in 1998, is contemplating provisionally recognizing, by means of a new exchange of letters between its President and the Secretary-General, the new Appeals Tribunal as the appellate body.

### 1. The Registrar and Deputy Registrar

66. The Registrar is the regular channel of communications to and from the Court and in particular effects all communications, notifications and transmissions of documents required by the Statute or by the Rules. The Registrar performs, among others, the following tasks: (a) he keeps the General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry; (b) he is present in person, or represented by the Deputy Registrar, at meetings of the Court and of Chambers, and is responsible for the preparation of minutes of such meetings; (c) he makes arrangements for such provision or verification of translations and interpretations into the official languages of the Court (French and English), as the Court may require; (d) he signs all judgments, advisory opinions and orders of the Court as well as the minutes; (e) he is responsible for the administration of the Registry and for the work of all its departments and divisions, including the accounts and financial administration in accordance with the financial procedures of the United Nations; (f) he assists in maintaining the Court's external relations, in particular with other organs of the United Nations and with other international organizations and States, and is responsible for information concerning the Court's activities and for the Court's publications; and (g) he has custody of the seals and stamps of the Court, of the archives of the Court, and of such other archives as may be entrusted to the Court (including the archives of the Nuremberg International Military Tribunal).

67. The Deputy Registrar assists the Registrar and acts as Registrar in the latter's absence. Since 1998 the Deputy Registrar has been entrusted with wider administrative responsibilities, including direct supervision of the Archives and Information Technology Divisions.

68. The Registrar and the Deputy Registrar, when acting for the Registrar, are, pursuant to the exchange of correspondence mentioned in paragraph 49 above and to General Assembly resolution 90 (I), accorded the same privileges and immunities as heads of diplomatic missions in The Hague and, on journeys in third States, all the privileges, immunities and facilities granted to diplomatic envoys.

## 2. Substantive divisions and units of the Registry

### Department of Legal Matters

69. The Department of Legal Matters, composed of eight posts in the Professional category and one in the General Service category, is responsible, under the direct supervision of the Registrar, for all legal matters within the Registry. In particular, its task is to assist the Court in the exercise of its judicial functions. It acts as secretariat to the drafting committees which prepare the Court's draft decisions. It also acts as secretariat to the Rules Committee. It carries out research in international law, examining judicial and procedural precedents, and prepares studies and notes for the Court and the Registrar as required. It prepares for signature by the Registrar all correspondence in pending cases and, more generally, diplomatic correspondence relating to the application of the Statute or the Rules of Court. It is also responsible for monitoring the headquarters agreements with the host country. Further, it draws up the minutes of the Court's meetings. Finally, the Department may be consulted on any legal question relating to the terms of employment of Registry staff.

### Department of Linguistic Matters

70. The Department of Linguistic Matters, currently composed of 17 posts in the Professional category and 1 in the General Service category, is responsible for the translation of documents to and from the Court's two official languages and provides linguistic support to judges. The Court works equally in its two official languages at all stages of its activity. Documents translated include case pleadings and other communications from States parties; verbatim records of hearings; draft judgments, advisory opinions and orders of the Court, together with their various working documents; judges' notes, opinions and declarations appended to judgments, advisory opinions and orders; minutes of meetings of the Court and of its subsidiary bodies, including the Budgetary and Administrative Committee and other committees; internal reports, notes, studies, memorandums and directives; speeches by the President and judges to outside bodies; reports and communications to the Secretariat, etc. The Department also provides interpretation at private and public meetings of the Court and, as required, at meetings held by the President and members of the Court with agents of the parties and other official visitors.

71. Following the creation, in 2000, of 12 posts in the Department, there was initially a substantial decrease in recourse to outside translators. However, in view of the increase in the Court's workload, the requirements for temporary assistance for meetings have begun to rise again. The Department nevertheless does its best to make use of home translation (less expensive than bringing freelance translators in to work in the Registry) and remote translation (performed by other linguistic departments within the United Nations system). For Court hearings and deliberations, outside interpreters are used; however, in order to reduce costs, achieve greater flexibility in the event of changes to the Court's schedule and ensure more effective synergy between the various tasks of the Department, the Department has initiated a programme to train translators as interpreters; one English-to-French translator has already become capable of interpreting at the requisite professional level.

**Information Department**

72. The Information Department, composed of three posts in the Professional category and one in the General Service category, plays an important part in the Court's external relations. Its duties consist of replying to requests for information about the Court, preparing all documents containing general information on the Court (in particular the annual report of the Court to the General Assembly, the *Yearbook* and handbooks for the general public) and encouraging and assisting the media to report on the work of the Court (in particular by preparing press releases and developing new communication aids, especially audio-visual ones). The Department gives presentations on the Court to various interested audiences (diplomats, lawyers, students and others) and is responsible for keeping the Court's website up to date. Its duties extend to internal communication as well.

73. The Information Department is also responsible for organizing the public sittings of the Court and all other official events, in particular a large number of visits, including those by distinguished guests. It then serves as a protocol office.

**3. Technical divisions**

**Administrative and Personnel Division**

74. The Administrative and Personnel Division, currently composed of two posts in the Professional category and 12 in the General Service category, is responsible for various duties related to administration and staff management, including planning and implementation of staff recruitment, appointment, promotion, training and separation from service. In its staff management functions, it ensures observance of the Staff Regulations for the Registry and of those United Nations Staff Regulations and Rules which the Court determines to be applicable. As part of its recruitment tasks, the Division prepares vacancy announcements, reviews applications, arranges interviews for the selection of candidates, prepares contracts for successful candidates and handles the intake of new staff members. The Division also administers staff entitlements and various benefits, handles the relevant personnel actions and liaises with the Office of Human Resources Management and the United Nations Joint Staff Pension Fund.

75. The Administrative and Personnel Division is also responsible for procurement, inventory control and, in liaison with the Carnegie Foundation, which owns the Peace Palace building, building-related matters. It has certain security responsibilities and also oversees the General Assistance Division, which, under the responsibility of a coordinator, provides general assistance to members of the Court and Registry staff in regard to messenger, transport and reception services.

**Finance Division**

76. The Finance Division, composed of one post in the Professional category and two in the General Service category, is responsible for financial matters. Its duties include, in particular, preparing the draft budget, ensuring that the budget is properly implemented, keeping the financial accounting books, financial reporting, managing vendor payments and payroll and carrying out payroll-related operations for members of the Court and Registry staff (e.g., various allowances and expense reimbursements). The Finance Division is also responsible for paying the pensions

of retired members of the Court, for treasury and banking matters and for maintaining regular contact with the tax authorities of the host country.

**Publications Division**

77. The Publications Division, composed of three posts in the Professional category, is responsible for the preparation of manuscripts, proofreading and correction of proofs, study of estimates and choice of printing firms in relation to the following official publications of the Court: (a) reports of judgments, advisory opinions and orders; (b) pleadings, oral arguments and documents; (c) acts and documents concerning the organization of the Court; (d) bibliographies; and (e) yearbooks. It is also responsible for various other publications, as instructed by the Court or the Registrar. Moreover, as the printing of the Court's publications is outsourced, the Division is responsible for the preparation, conclusion and implementation of contracts with printers, including control of all invoices. (For more information on the Court's publications, see chap. VII below.)

**Documents Division and Library of the Court**

78. The Documents Division, composed of two posts in the Professional category and four in the General Service category, has as its main task acquiring, conserving, classifying and making available the leading works on international law, as well as a significant number of periodicals and other relevant documents. The Division prepares bibliographies on cases brought before the Court, and other bibliographies as required. It also assists the translators with their reference needs. The Division provides access to an increasing number of databases and online resources in partnership with the United Nations System Electronic Information Acquisition Consortium, as well as to a comprehensive collection of electronic documents of relevance for the Court. The Division has acquired integrated software for managing the collection and the Division's operations and will shortly launch an online catalogue accessible to all members of the Court and Registry staff. The Division operates in close collaboration with the Peace Palace Library of the Carnegie Foundation.

79. The Documents Division is also responsible for the archives of the Nuremberg International Military Tribunal (including paper documents, gramophone records, films and some objects). A project to conserve and digitize these archives is currently under way.

**Information Technology Division**

80. The Information Technology Division, composed of two posts in the Professional category and four in the General Service category, is responsible for the efficient functioning and continued development of information technology at the Court. It is charged with the administration and functioning of the Court's local area networks and all other computer and technical equipment. It is also responsible for the implementation of new software and hardware projects, and assists and trains computer users in all aspects of information technology. Finally, the Division is responsible for the technical development and management of the Court's website and is currently researching a project to modernize the Registry's telephony facilities with a view to achieving substantial cost-cutting in this area.

### Archives, Indexing and Distribution Division

81. The Archives, Indexing and Distribution Division, composed of one post in the Professional category and five in the General Service category, is responsible for indexing and classifying all correspondence and documents received or sent by the Court, and for the subsequent retrieval of any such item on request. The duties of this Division include, in particular, maintaining an up-to-date index of incoming and outgoing correspondence and of all documents, both official and otherwise, held on file. It is also responsible for checking, distributing and filing all internal documents, some of which are strictly confidential. The Division now has a computerized system for managing both internal and external documents.

82. The Division also handles the dispatch of the Court's official publications to Members of the United Nations, as well as to numerous institutions and various individuals.

### Text Processing and Reproduction Division

83. The Text Processing and Reproduction Division is composed of one post in the Professional category and nine in the General Service category. It carries out all the typing work of the Registry and, as necessary, the reproduction of documents.

84. The Division is responsible in particular for the typing and reproduction of the following documents in addition to correspondence proper: translations of written pleadings and annexes; verbatim records of hearings and their translations; the translations of judges' notes and judges' amendments to draft judgments; and the translations of judges' opinions. It is also responsible for the typing and reproduction of the Court's judgments, advisory opinions and orders. In addition, it is responsible for checking documents and references, reviewing and page layout.

### Law clerks and the Special Assistant to the President

85. The President of the Court is aided by a special assistant who is administratively attached to the Department of Legal Matters. Thanks to the approval by the General Assembly of six new associate legal officer (P-2) posts for the period 2010-2011, the other members of the Court will now each be assisted by a law clerk. Officially, these 14 associate legal officers are also members of the Registry staff attached to the Department of Legal Matters.

86. The law clerks carry out research for the members of the Court and the judges ad hoc, and work under their responsibility, but may be called upon as required to provide temporary support to the Department of Legal Matters, especially in specific case-related matters. Generally, the law clerks are supervised by a coordination and training committee made up of several members of the Court and senior Registry staff.

### Judges' secretaries

87. The 15 judges' secretaries, working under the authority of a coordinator, undertake manifold duties. As a general rule, the secretaries type notes, amendments and opinions, as well as all correspondence of judges and judges ad hoc. They assist the judges in the management of their work diary and in the preparation of relevant papers for meetings, as well as in dealing with visitors and enquiries.

**Senior Medical Officer**

88. Since 2009, the Registry has employed a senior medical officer on a quarter-time contract, paid out of the temporary assistance appropriation. The medical officer conducts emergency and periodic medical examinations, and initial medical examinations for new staff. She advises the Registry administration on health and hygiene matters, work-station ergonomics and working conditions. Finally, the medical officer organizes information, screening, prevention and vaccination campaigns.

**Staff committee**

89. The Registry staff committee was established in 1979 and is governed by article 9 of the Staff Regulations for the Registry. Its constitution was amended in 1991. During the period under review, the committee, with the Registrar's support, elected anew its officers, supplemented its founding document and revived the staff bulletin. At the same time, it resumed its role of promoting dialogue and heeding the concerns expressed within the Registry, while working in constructive partnership with Registry management.

## C. Seat

90. The seat of the Court is established at The Hague; this, however, does not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable to do so (Statute, Art. 22, para. 1; Rules, art. 55).

91. The Court occupies premises in the Peace Palace at The Hague. An agreement of 21 February 1946 between the United Nations and the Carnegie Foundation, which is responsible for the administration of the Peace Palace, determines the conditions under which the Court uses these premises and provides, in exchange, for the payment to the Carnegie Foundation of an annual contribution. That contribution was increased pursuant to supplementary agreements approved by the General Assembly in 1951 and 1958, as well as subsequent amendments. The annual contribution by the United Nations to the Carnegie Foundation amounts to €1,224,093 for 2010.

## D. Peace Palace Museum

92. In 1999, the Secretary-General of the United Nations inaugurated the museum which the International Court of Justice had opened that year in the south wing of the Peace Palace. The museum, which is run by the Carnegie Foundation, presents an overview of the theme "Peace through justice". Plans are being developed to facilitate public access to the historical items exhibited in the museum by moving them to a new building, the Visitor Centre, which the Carnegie Foundation will build in 2011-2012 in front of the Peace Palace grounds and will subsequently manage. The new centre will be able to accommodate several thousand visitors each year.

# Chapter V
# Judicial work of the Court

## A. General overview

93. During the period under review, 17 contentious cases and two advisory procedures were pending; 15 contentious cases and one advisory procedure remain so at 31 July 2010.

94. During this period, four new contentious cases were submitted to the Court in the following order:

*Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil);*

*Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland);*

*Whaling in the Antarctic (Australia* v. *Japan);*

*Proceedings jointly instituted by Burkina Faso and the Republic of Niger (Burkina Faso/Republic of Niger).*

95. In the same period, a request for an advisory opinion was submitted to the Court by IFAD concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development.*

96. During 2009/10, the Court held public hearings in the three following cases (in chronological order):

*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay);*

*Accordance with international law of the unilateral declaration of independence in respect of Kosovo (request for advisory opinion);*

*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo).*

97. During the period under review, the Court delivered one judgment, in the case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay).*

98. The Court also made 10 orders fixing time limits for the filing of written pleadings in the following cases (in chronological order):

*Certain Criminal Proceedings in France (Republic of the Congo* v. *France);*

*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation);*

*Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland);*

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia);*

*Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece);*

*Maritime Dispute (Peru* v. *Chile);*

*Aerial Herbicide Spraying (Ecuador* v. *Colombia);*

*Whaling in the Antarctic (Australia* v. *Japan).*

99. The Court also gave an advisory opinion on the question of the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo.*

100. The Court made an order fixing time limits for the submission of written statements and written comments in the advisory proceedings initiated by IFAD and concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development.*

## B. Pending contentious proceedings during the period under review

### 1. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

101. On 2 July 1993, Hungary and Slovakia jointly notified to the Court a special agreement, signed on 7 April 1993, for the submission of certain issues arising out of differences regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the construction and operation of the Gabčíkovo-Nagymaros barrage system (see annual report 1992/93 et seq.). In its judgment of 25 September 1997, the Court found that both Hungary and Slovakia had breached their legal obligations. It called upon both States to negotiate in good faith in order to ensure the achievement of the objectives of the 1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989. On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment in the case. Such an additional judgment was necessary, according to Slovakia, because of the unwillingness of Hungary to implement the judgment delivered by the Court in that case on 25 September 1997. Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time limit of 7 December 1998 fixed by the President of the Court. The parties have subsequently resumed negotiations and have informed the Court on a regular basis of the progress made. The case remains pending.

### 2. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*

102. On 28 December 1998, Guinea instituted proceedings against the Democratic Republic of the Congo by filing an "Application for purposes of diplomatic protection", in which it requested the Court to find that "the Democratic Republic of the Congo is guilty of serious breaches of international law" allegedly "committed upon the person of a Guinean national", Ahmadou Sadio Diallo (see annual report 1998/99 et seq.). On 24 May 2007, the Court rendered a judgment declaring Guinea's Application to be admissible insofar as it concerned protection of Mr. Diallo's rights as an individual and of his direct rights as *associé* in Africom-Zaire and Africontainers-Zaire, but inadmissible insofar as it concerned protection of Mr. Diallo in respect of alleged violations of the rights of Africom-Zaire and Africontainers-Zaire. By an order of 27 June 2007, the Court fixed 27 March 2008 as the time limit for the filing of a counter-memorial by the Democratic Republic of the Congo. The counter-memorial was filed within the time limit thus fixed. By an order of 5 May

2008, the Court authorized the submission of a reply by Guinea and a rejoinder by the Democratic Republic of the Congo. It fixed 19 November 2008 and 5 June 2009 as the respective time limits for the filing of those written pleadings, which were filed within the time limits thus fixed.

103. Public hearings took place from 19 to 29 April 2010. At the conclusion of their oral arguments, the parties presented their final submissions to the Court.

104. Guinea requests the Court "to adjudge and declare: (a) that, in carrying out arbitrary arrests of its national, Mr. Ahmadou Sadio Diallo, and expelling him; in not at that time respecting his right to the benefit of the provisions of the 1963 Vienna Convention on Consular Relations; in submitting him to humiliating and degrading treatment; in depriving him of the exercise of his rights of ownership, oversight and management in respect of the companies which he founded in the Democratic Republic of the Congo and in which he was the sole *associé*; in preventing him in that capacity from pursuing recovery of the numerous debts owed to the said companies both by the Democratic Republic of the Congo itself and by other contractual partners; and in expropriating de facto Mr. Diallo's property, the Democratic Republic of the Congo has committed internationally wrongful acts which engage its responsibility to the Republic of Guinea; (b) that the Democratic Republic of the Congo is accordingly bound to make full reparation on account of the injury suffered by Mr. Diallo or by the Republic of Guinea in the person of its national; (c) that such reparation shall take the form of compensation covering the totality of the injuries caused by the internationally wrongful acts of the Democratic Republic of the Congo, including loss of earnings, and shall also include interest". Guinea further requests the Court "kindly to authorize it to submit an assessment of the amount of the compensation due to it on this account from the Democratic Republic of the Congo in a subsequent phase of the proceedings in the event that the two Parties should be unable to agree on the amount thereof within a period of six months following delivery of the Judgment".

105. The Democratic Republic of the Congo, "[i]n the light of the arguments [which it made] and of the Court's Judgment of 24 May 2007 on the preliminary objections, whereby the Court declared Guinea's Application to be inadmissible in so far as it concerned protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire ... respectfully requests the Court to adjudge and declare that: 1. the Democratic Republic of the Congo has not committed any internationally wrongful acts towards Guinea in respect of Mr. Diallo's individual personal rights; 2. the Democratic Republic of the Congo has not committed any internationally wrongful acts towards Guinea in respect of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire; 3. accordingly, the Application of the Republic of Guinea is unfounded in fact and in law and no reparation is due".

106. The Court has begun its deliberation; it will deliver its judgment at a public sitting on a date to be announced in due course.

### 3. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*

107. On 23 June 1999, the Democratic Republic of the Congo filed an application instituting proceedings against Uganda for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the

Organization of African Unity" (see annual report 1998/99 et seq.). Public hearings on the merits of the case were held from 11 to 29 April 2005.

108. In the judgment which it rendered on 19 December 2005 (see annual report 2005/06), the Court found in particular that the parties were under obligation to one another to make reparation for the injury caused; it decided that, failing agreement between the parties, the question of reparation would be settled by the Court. It reserved for this purpose the subsequent procedure in the case. Accordingly, the case remains pending. The parties have transmitted to the Court certain information concerning the negotiations they are holding to settle the question of reparation, as referred to in points (6) and (14) of the operative clause of the judgment and paragraphs 260, 261 and 344 of the reasoning in the judgment.

4. ***Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)***

109. On 2 July 1999, Croatia instituted proceedings before the Court against Serbia (then known as the Federal Republic of Yugoslavia) with respect to a dispute concerning alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide committed between 1991 and 1995.

110. In its application, Croatia contends, inter alia, that, "[b]y directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of ... Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia", Serbia was liable for "ethnic cleansing" committed against Croatian citizens, "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction".

111. Accordingly, Croatia requests the Court to adjudge and declare that Serbia has "breached its legal obligations" to Croatia under the Genocide Convention and that it has "an obligation to pay to ... Croatia, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment ... in a sum to be determined by the Court".

112. As basis for the Court's jurisdiction, Croatia invokes article IX of the Genocide Convention, to which, it claims, both States are parties.

113. By an order of 14 September 1999, the Court fixed 14 March 2000 and 14 September 2000 as the respective time limits for the filing of a memorial by Croatia and a counter-memorial by Serbia. These time limits were twice extended, by orders of 10 March 2000 and 27 June 2000. Croatia filed its memorial within the time limit as extended by the latter order.

114. On 11 September 2002, within the time limit for the filing of its counter-memorial as extended by the order of 27 June 2000, Serbia raised certain preliminary objections in respect of jurisdiction and admissibility. Pursuant to article 79 of the Rules of Court, the proceedings on the merits were suspended. Croatia filed a written statement of its observations and submissions on Serbia's preliminary objections on 25 April 2003, within the time limit fixed by the Court.

115. Public hearings on the preliminary objections in respect of jurisdiction and admissibility were held from 26 to 30 May 2008 (see annual report 2007/08).

116. On 18 November 2008, the Court rendered its judgment on the preliminary objections (see annual report 2008/09, paras. 121 and 122). In its judgment the Court found, inter alia, that, subject to its statement concerning the second preliminary objection raised by the respondent, it had jurisdiction, on the basis of article IX of the Genocide Convention, to entertain Croatia's application. The Court added that Serbia's second preliminary objection did not, in the circumstances of the case, possess an exclusively preliminary character. It rejected the third preliminary objection raised by Serbia.

117. By an order of 20 January 2009, the President of the Court fixed 22 March 2010 as the time limit for the filing of the counter-memorial of Serbia. That pleading, containing counterclaims, was filed within the prescribed time limit. By an order of 4 February 2010, the Court directed the submission of a reply by Croatia and a rejoinder by Serbia concerning the claims presented by the parties. It fixed 20 December 2010 and 4 November 2011, respectively, as the time limits for the filing of those written pleadings.

### 5. *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*

118. On 6 December 2001, Nicaragua filed an application instituting proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

119. In its application, Nicaragua requests the Court to adjudge and declare:

> First, that ... Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);
>
> Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.

120. Nicaragua further indicates that it "reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title". It also "reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua".

121. As basis for the Court's jurisdiction, Nicaragua invokes article XXXI of the Pact of Bogotá, to which both Nicaragua and Colombia are parties, as well as the declarations of the two States recognizing the compulsory jurisdiction of the Court.

122. By an order of 26 February 2002, the Court fixed 28 April 2003 and 28 June 2004 as the respective time limits for the filing of a memorial by Nicaragua and a counter-memorial by Colombia. The memorial of Nicaragua was filed within the time limit thus fixed.

123. Copies of the pleadings and documents annexed were requested by the Governments of Honduras, Jamaica, Chile, Peru, Ecuador, Venezuela (Bolivarian Republic of) and Costa Rica by virtue of article 53, paragraph 1, of the Rules of Court. Pursuant to that same provision, the Court, after ascertaining the views of the parties, acceded to those requests.

124. On 21 July 2003, within the time limit set by article 79, paragraph 1, of the Rules of Court, Colombia raised preliminary objections to the jurisdiction of the Court.

125. On 13 December 2007, the Court rendered a judgment in which it found that Nicaragua's application was admissible insofar as it concerned sovereignty over the maritime features claimed by the parties other than the islands of San Andrés, Providencia and Santa Catalina, and in respect of the maritime delimitation between the parties.

126. By an order of 11 February 2008, the President of the Court fixed 11 November 2008 as the time limit for the filing of the counter-memorial of Colombia. The counter-memorial was filed within the time limit thus fixed.

127. By an Order of 18 December 2008, the Court directed Nicaragua to submit a reply and Colombia a rejoinder, and fixed 18 September 2009 and 18 June 2010 as the respective time limits for the filing of those written pleadings, which were filed within the time limits thus fixed.

128. On 25 February 2010, Costa Rica filed an application for permission to intervene in the case. In its application, Costa Rica states among other things that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". Costa Rica has indicated in its application that it is not seeking to intervene in the proceedings as a party. The application was immediately communicated to Nicaragua and Colombia, and the Court fixed 26 May 2010 as the time limit for the filing of written observations by those States. The written observations were filed within the time limit thus fixed. It is now for the Court to decide whether the application for permission to intervene will be granted.

129. On 10 June 2010, Honduras also filed an application for permission to intervene in the case. It is asserted in the application that Nicaragua, in its dispute with Colombia, is putting forward maritime claims that lie in an area of the Caribbean Sea in which Honduras has rights and interests. Honduras states in its application that it is seeking primarily to intervene in the proceedings as a party. Honduras's application was immediately communicated to Nicaragua and Colombia. The President of the Court fixed 2 September 2010 as the time limit for these two States to furnish written observations on the application. It will be for the Court to decide whether the application for permission to intervene will be granted.

### 6. *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*

130. On 9 December 2002, the Congo filed an application instituting proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French judicial authorities further to a complaint for crimes against humanity and torture filed by various associations against the President of the Congo, Denis Sassou Nguesso, the Minister of the Interior, Pierre Oba, and other individuals, including General Norbert Dabira, Inspector-General of the Congolese Armed Forces.

The application further stated that, in connection with those proceedings, an investigating judge of the High Court (*Tribunal de grande instance*) of Meaux had issued a warrant for the President of the Congo to be examined as a witness.

131. The Congo contends that, by "attributing to itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country", France has violated "the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations ... exercise its authority on the territory of another State". The Congo further submits that, in issuing a warrant instructing police officers to examine the President of the Republic of the Congo as witness in the case, France has violated "the criminal immunity of a foreign Head of State, an international customary rule recognized by the jurisprudence of the Court".

132. In its application, the Congo indicated that it was seeking to found the jurisdiction of the Court, pursuant to article 38, paragraph 5, of the Rules of Court, "on the consent of the French Republic, which w[ould] certainly be given". In accordance with that provision, the application by the Congo was transmitted to the Government of France and no further action was taken in the proceedings at that stage.

133. By a letter dated 8 April 2003 and received in the Registry on 11 April 2003, France stated that it "consent[ed] to the jurisdiction of the Court to entertain the Application pursuant to Article 38, paragraph 5". That consent made it possible to enter the case in the Court's List and to open the proceedings. In its letter, France added that its consent to the Court's jurisdiction applied strictly within the limits "of the claims formulated by the Republic of the Congo" and that "article 2 of the Treaty of Cooperation signed on 1 January 1974 by the French Republic and the People's Republic of the Congo, to which the latter refers in its application, does not constitute a basis of jurisdiction for the Court in the present case".

134. The application of the Congo was accompanied by a request for the indication of a provisional measure "seek[ing] an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*".

135. Public hearings were held on the request for the indication of a provisional measure on 28 and 29 April 2003. In its order of 17 June 2003, the Court declared that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

136. The memorial of the Congo and the counter-memorial of France were filed within the time limits fixed by the order of 11 July 2003.

137. By an order of 17 June 2004, the Court, taking account of the agreement of the parties and of the particular circumstances of the case, authorized the submission of a reply by the Congo and a rejoinder by France, and fixed the time limits for the filing of those pleadings. Following four successive requests for extensions of the time limit for filing the reply, the President of the Court fixed the time limits for the filing of the reply by the Congo and the rejoinder by France as 11 July 2006 and 11 August 2008, respectively. Those pleadings were filed within the time limits thus extended.

138. By an order of 16 November 2009, the Court, specifically citing article 101 of the Rules of Court and taking account of the agreement of the parties and the exceptional circumstances of the case, authorized the submission of an additional pleading by the Congo, followed by an additional pleading by France. It fixed 16 February 2010 and 17 May 2010 as the respective time limits for the filing of those pleadings, which were filed within the time limits thus fixed.

### 7. *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*

139. On 4 May 2006, Argentina filed an application instituting proceedings against Uruguay concerning alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed between the two States on 26 February 1975 (hereinafter "the 1975 statute") for the purpose of establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constitutes their joint boundary.

140. In its application, Argentina charged Uruguay with having unilaterally authorized the construction of two pulp mills on the River Uruguay without complying with the obligatory prior notification and consultation procedures under the 1975 statute. Argentina claimed that those mills posed a threat to the river and its environment and were likely to impair the quality of the river's waters and to cause significant transboundary damage to Argentina.

141. As basis for the Court's jurisdiction, Argentina cited the first paragraph of article 60 of the 1975 statute, which provides that any dispute concerning the interpretation or application of that statute which cannot be settled by direct negotiations may be submitted by either party to the Court.

142. Argentina's application was accompanied by a request for the indication of provisional measures, whereby Argentina asked that Uruguay be ordered to suspend the authorizations for construction of the mills and all building works pending a final decision by the Court; to cooperate with Argentina with a view to protecting and conserving the aquatic environment of the River Uruguay; and to refrain from taking any further unilateral action with respect to construction of the two mills incompatible with the 1975 statute, and from any other action which might aggravate the dispute or render its settlement more difficult.

143. Public hearings on the request for the indication of provisional measures were held on 8 and 9 June 2006. By an order of 13 July 2006, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under article 41 of the Statute to indicate provisional measures.

144. On 29 November 2006, Uruguay in turn submitted a request for the indication of provisional measures on the grounds that, from 20 November 2006, organized groups of Argentine citizens had blockaded a "vital international bridge" over the River Uruguay, that that action was causing it considerable economic prejudice and that Argentina had taken no action to end the blockade. Concluding its request, Uruguay requested the Court to order Argentina to take "all reasonable and appropriate steps ... to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges or roads between the two States"; to abstain "from any measure that might aggravate, extend or make more difficult the settlement of this dispute"; and to abstain "from any other measure

which might prejudice the rights of Uruguay in dispute before the Court". Public hearings were held on 18 and 19 December 2006 on the request for the indication of provisional measures. By an order of 23 January 2007, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under article 41 of the Statute.

145. Argentina filed its memorial and Uruguay its counter-memorial within the time limits fixed by the order of 13 July 2006.

146. By an order of 14 September 2007, the Court authorized the submission of a reply by Argentina and a rejoinder by Uruguay. Those pleadings were filed within the prescribed time limits.

147. By letters dated 16 June 2009 and 17 June 2009, respectively, Uruguay and Argentina notified the Court that they had come to an agreement for the purpose of producing new documents pursuant to article 56 of the Rules of Court. By letters of 23 June 2009, the Registrar informed the parties that the Court had decided to authorize them to proceed as they had agreed. The new documents were duly filed within the agreed time limit.

148. On 15 July 2009, each of the parties, as provided for in the agreement between them and with the authorization of the Court, submitted comments on the new documents produced by the other party. Each party also filed documents in support of its comments.

149. Public hearings were held between 14 September 2009 and 2 October 2009. At the hearings, members of the Court put questions to the parties, to which replies were given orally and in writing, in accordance with article 61, paragraph 4, of the Rules of Court. Pursuant to article 72 of the Rules of Court, one of the parties submitted written comments on a written reply provided by the other and received after the closure of the oral proceedings.

150. On 20 April 2010, the Court delivered its judgment, the operative clause of which reads as follows:

> For these reasons,
>
> The Court,
>
> (1) By thirteen votes to one,
>
> *Finds* that the Eastern Republic of Uruguay has breached its procedural obligations under Articles 7 to 12 of the 1975 Statute of the River Uruguay and that the declaration by the Court of this breach constitutes appropriate satisfaction;
>
> IN FAVOUR: Vice-President Tomka, Acting President; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; Judge ad hoc Vinuesa;
>
> AGAINST: Judge ad hoc Torres Bernárdez;
>
> (2) By eleven votes to three,
>
> *Finds* that the Eastern Republic of Uruguay has not breached its substantive obligations under Articles 35, 36 and 41 of the 1975 Statute of the River Uruguay;

IN FAVOUR: Vice President Tomka, Acting President; Judges Koroma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; Judge ad hoc Torres Bernárdez;

AGAINST: Judges Al-Khasawneh, Simma; Judge ad hoc Vinuesa;

(3) Unanimously,

*Rejects* all other submissions by the Parties.

Judges Al-Khasawneh and Simma appended a joint dissenting opinion to the judgment of the Court; Judge Keith appended a separate opinion to the judgment of the Court; Judge Skotnikov appended a declaration to the judgment of the Court; Judge Cançado Trindade appended a separate opinion to the judgment of the Court; Judge Yusuf appended a declaration to the judgment of the Court; Judge Greenwood appended a separate opinion to the judgment of the Court; Judge ad hoc Torres Bernárdez appended a separate opinion to the judgment of the Court; and Judge ad hoc Vinuesa appended a dissenting opinion to the judgment of the Court.

**8.** ***Maritime Dispute (Peru v. Chile)***

151. On 16 January 2008, Peru filed an application instituting proceedings against Chile concerning a dispute in relation to "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia ... the terminal point of the land boundary established pursuant to the Treaty ... of 3 June 1929",[4] and also to the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas".

152. In its application, Peru claims that "the maritime zones between Chile and Peru have never been delimited by agreement or otherwise" and that, accordingly, "the delimitation is to be determined by the Court in accordance with customary international law". Peru states that, "since the 1980s, [it] has consistently endeavoured to negotiate the various issues in dispute, but ... has constantly met a refusal from Chile to enter into negotiations". It asserts that a note of 10 September 2004 from the Minister for Foreign Affairs of Chile to the Minister for Foreign Affairs of Peru made further attempts at negotiation impossible.

153. Peru consequently "requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law ... and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf".

154. As basis for the Court's jurisdiction, Peru invokes article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties without reservation.

155. By an order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time limits for the filing of a memorial by Peru and a counter-memorial by Chile. Those pleadings were filed within the time limits thus prescribed.

[4] Treaty between Chile and Peru for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929.

156. Colombia and Ecuador, relying on article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. In accordance with that provision, the Court, after ascertaining the views of the parties, acceded to those requests.

157. By an order of 27 April 2010, the Court authorized the submission of a reply by Peru and a rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as the respective time limits for the filing of those pleadings.

### 9. *Aerial Herbicide Spraying (Ecuador v. Colombia)*

158. On 31 March 2008, Ecuador filed an application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador".

159. Ecuador maintains that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful".

160. Ecuador accordingly requests the Court:

> to adjudge and declare that:
>
> (a) Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;
>
> (b) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:
>
> (i) death or injury to the health of any person or persons arising from the use of such herbicides; and
>
> (ii) any loss of or damage to the property or livelihood or human rights of such persons; and
>
> (iii) environmental damage or the depletion of natural resources; and
>
> (iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and
>
> (v) any other loss or damage; and
>
> (c) Colombia shall:
>
> (i) respect the sovereignty and territorial integrity of Ecuador; and
>
> (ii) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; and

(iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador.

161. As basis for the Court's jurisdiction, Ecuador invokes article XXXI of the Pact of Bogotá of 30 April 1948, to which both States are parties. Ecuador also relies on article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

162. In its application, Ecuador reaffirms its opposition to "the export and consumption of illegal narcotics", but stresses that the issues presented to the Court "relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations — and the harmful effects in Ecuador of such operations".

163. By an order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time limits for the filing of a Memorial by Ecuador and a counter-memorial by Colombia. Those pleadings were filed within the time limits thus prescribed.

164. By an order of 25 June 2010, the Court directed the submission of a reply by Ecuador and a rejoinder by Colombia. It fixed 31 January 2011 and 1 December 2011, respectively, as the time limits for the filing of those pleadings. In making that decision, the Court took account of the agreement of the parties and the circumstances of the case. The subsequent procedure has been reserved for further decision.

### 10. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*

165. On 12 August 2008, Georgia instituted proceedings against the Russian Federation on the grounds of "its actions on and around the territory of Georgia in breach of [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination]". In its application, Georgia "also seeks to ensure that the individual rights" under the Convention "of all persons on the territory of Georgia are fully respected and protected".

166. Georgia claims that the Russian Federation, "through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under the Convention, including articles 2, 3, 4, 5 and 6". According to Georgia, the Russian Federation "has violated its obligations under the Convention during three distinct phases of its interventions in South Ossetia and Abkhazia", in the period from 1990 to August 2008.

167. Georgia requests the Court to order "the Russian Federation to take all steps necessary to comply with its obligations under the Convention".

168. As a basis for the jurisdiction of the Court, Georgia relies on article 22 of the Convention on the Elimination of All Forms of Racial Discrimination. It also reserves its right to invoke, as an additional basis of jurisdiction, article IX of the

Convention on the Prevention and Punishment of the Crime of Genocide, to which Georgia and the Russian Federation are parties.

169. Georgia's application was accompanied by a request for the indication of provisional measures in order to preserve its rights under the Convention "to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries".

170. In its request, Georgia reiterated its contention made in the application that "beginning in the early 1990s and acting in concert with separatist forces and mercenaries in the Georgian regions of South Ossetia and Abkhazia, the Russian Federation has engaged in a systematic policy of ethnic discrimination directed against the ethnic Georgian population and other groups in those regions".

171. Georgia further stated that "[o]n 8 August 2008, the Russian Federation launched a full scale military invasion against Georgia in support of ethnic separatists in South Ossetia and Abkhazia" and that this "military aggression has resulted in hundreds of civilian deaths, extensive destruction of civilian property, and the displacement of virtually the entire ethnic Georgian population in South Ossetia".

172. Georgia claimed that "[d]espite the withdrawal of Georgian armed forces and the unilateral declaration of a ceasefire, Russian military operations continued beyond South Ossetia into territories under Georgian Government control". Georgia further claimed that "[t]he continuation of these violent discriminatory acts constitutes an extremely urgent threat of irreparable harm to Georgia's rights under [the Convention] in dispute in this case".

173. Georgia requested the Court "as a matter of utmost urgency to order the following measures to protect its rights pending the determination of this case on the merits:

(a) the Russian Federation shall give full effect to its obligations under [the Convention];

(b) the Russian Federation shall immediately cease and desist from any and all conduct that could result, directly or indirectly, in any form of ethnic discrimination by its armed forces, or other organs, agents, and persons and entities exercising elements of governmental authority, or through separatist forces in South Ossetia and Abkhazia under its direction and control, or in territories under the occupation or effective control of Russian forces;

(c) the Russian Federation shall in particular immediately cease and desist from discriminatory violations of the human rights of ethnic Georgians, including attacks against civilians and civilian objects, murder, forced displacement, denial of humanitarian assistance, extensive pillage and destruction of towns and villages, and any measures that would render permanent the denial of the right to return of IDPs, in South Ossetia and adjoining regions of Georgia, and in Abkhazia and adjoining regions of Georgia, and any other territories under Russian occupation or effective control."

174. On 15 August 2008, having considered the gravity of the situation, the President of the Court, acting under article 74, paragraph 4, of the Rules of Court, urgently called upon the parties to act in such a way as would enable any order the

Court might take on the request for provisional measures to have its appropriate effects.

175. Public hearings were held from 8 to 10 October 2008 to hear the oral observations of the parties on the request for the indication of provisional measures.

176. On 15 October 2008, the Court handed down its Order, the operative part of which reads as follows:

For these reasons,

The Court, reminding the Parties of their duty to comply with their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

*Indicates* the following provisional measures:

A. By eight votes to seven,

Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall

(1) refrain from any act of racial discrimination against persons, groups of persons or institutions;

(2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations,

(3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,

(i) security of persons;

(ii) the right of persons to freedom of movement and residence within the border of the State;

(iii) the protection of the property of displaced persons and of refugees;

(4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions;

IN FAVOUR: President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor, Judge ad hoc Gaja;

AGAINST: Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov;

B. By eight votes to seven,

Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;

IN FAVOUR: President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;

AGAINST: Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov;

C. By eight votes to seven,

Each Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;

AGAINST: Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov;

D. By eight votes to seven,

Each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;

AGAINST: Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov.

Vice-President Al-Khasawneh and Judges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov appended a joint dissenting opinion to the order of the Court. Judge ad hoc Gaja appended a declaration to the order.

177. By an order of 2 December 2008, the President fixed 2 September 2009 as the time limit for the filing of a memorial by Georgia and 2 July 2010 as the time limit for the filing of a counter-memorial by the Russian Federation. The memorial of Georgia was filed within the time limit thus prescribed.

178. On 1 December 2009, within the time limit set in article 79, paragraph 1, of the Rules of Court, the Russian Federation filed preliminary objections in respect of jurisdiction. Pursuant to article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were then suspended.

179. By an order of 11 December 2009, the Court fixed 1 April 2010 as the time limit for the filing by Georgia of a written statement containing its observations and submissions on the preliminary objections in respect of jurisdiction raised by the Russian Federation. It should be noted that the parties had agreed on a time limit of four months from the filing of the preliminary objections for the submission of the written statement. Georgia's written statement was filed within the time limit thus prescribed.

180. In summer 2010, the Court announced that it would hold public hearings on the preliminary objections from 13 to 17 September 2010.

### 11. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*

181. On 17 November 2008, the former Yugoslav Republic of Macedonia instituted proceedings against Greece for what it describes as "a flagrant violation of [Greece's] obligations under article 11" of the Interim Accord signed by the parties on 13 September 1995.

182. In its application, the former Yugoslav Republic of Macedonia requests the Court "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organisations".

183. The applicant contends that in accordance with article 11, paragraph 1, of the Interim Accord, Greece "has undertaken a binding obligation under international law" and that this provision lays down that Greece shall "not ... object to the application by or the membership of [the former Yugoslav Republic of Macedonia] in international, multilateral and regional organizations and institutions of which [Greece] is a member"; the text provides however that Greece "reserves the right to object to any membership referred to above if and to the extent [the former Yugoslav Republic of Macedonia] is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)", i.e., as "the former Yugoslav Republic of Macedonia".

184. The former Yugoslav Republic of Macedonia contends in its application that the respondent violated its rights under the Interim Accord by objecting, in April 2008, to its application to join the North Atlantic Treaty Organization (NATO). The former Yugoslav Republic of Macedonia contends, in particular, that Greece "veto[ed]" its application to join NATO because Greece desires "to resolve the difference between the parties concerning the constitutional name of the applicant as an essential precondition" for such membership.

185. The applicant argues that it has "met its obligations under the Interim Accord not to be designated as a member of NATO with any designation other than 'the former Yugoslav Republic of Macedonia'" and affirms that "the subject of this dispute does not concern — either directly or indirectly — the difference [that has arisen between Greece and itself over its name]".

186. The former Yugoslav Republic of Macedonia requests the Court to order Greece to "immediately take all necessary steps to comply with its obligations under article 11, paragraph 1" and "to cease and desist from objecting in any way, whether directly or indirectly, to the applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which [Greece] is a member".

187. In its application, the former Yugoslav Republic of Macedonia invokes as a basis for the jurisdiction of the Court article 21, paragraph 2, of the Interim Accord of 13 September 1995, which provides that "[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the differences referred to in article 5, paragraph 1".

188. By an order of 20 January 2009, the Court fixed 20 July 2009 as the time limit for the filing of a memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time limit for the filing of a counter-memorial by Greece. Those pleadings were filed within the time limits thus prescribed.

189. By an order of 12 March 2010, the Court authorized the submission of a reply by the former Yugoslav Republic of Macedonia and a rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time limits for the filing of those

pleadings. The reply of the former Yugoslav Republic of Macedonia was filed within the time limit thus prescribed.

**12.** ***Jurisdictional Immunities of the State (Germany* v. *Italy)***

190. On 23 December 2008, Germany instituted proceedings against Italy, alleging that "[t]hrough its judicial practice ... Italy has infringed and continues to infringe its obligations towards Germany under international law".

191. In its application, Germany contends that "[i]n recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State. The critical stage of that development was reached by the judgment of the Corte di Cassazione of 11 March 2004 in the *Ferrini* case, where [that court] declared that Italy held jurisdiction with regard to a claim ... brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry. After this judgment had been rendered, numerous other proceedings were instituted against Germany before Italian courts by persons who had also suffered injury as a consequence of the armed conflict". The *Ferrini* judgment having been recently confirmed "in a series of decisions delivered on 29 May 2008 and in a further judgment of 21 October 2008", Germany "is concerned that hundreds of additional cases may be brought against it".

192. The applicant states that enforcement measures have already been taken against German assets in Italy: a "judicial mortgage" on Villa Vigoni, the German-Italian centre of cultural exchange, has been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also cites "attempts by Greek nationals to enforce in Italy a judgment obtained in Greece on account of a ... massacre committed by German military units during their withdrawal in 1944".

193. Germany concludes its application by requesting the Court to adjudge and declare that Italy:

(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

(2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;

(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity.

Accordingly, the Federal Republic of Germany prays the Court to adjudge and declare that:

(4) the Italian Republic's international responsibility is engaged;

(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial

authorities infringing Germany's sovereign immunity become unenforceable;

(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above.

194. Germany reserves the right to request the Court to indicate provisional measures in accordance with Article 41 of the Statute of the Court, "should measures of constraint be taken by Italian authorities against German State assets, in particular diplomatic and other premises that enjoy protection against such measures pursuant to general rules of international law".

195. As the basis for the jurisdiction of the Court, Germany invokes, in its application, article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961. That article states:

> The High Contracting Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them including, in particular, those concerning:
>
> (a) the interpretation of a treaty;
>
> (b) any question of international law;
>
> (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
>
> (d) the nature or extent of the reparation to be made for the breach of an international obligation.

196. Germany asserts that, although the present case is between two member States of the European Union, the Court of Justice of the European Communities in Luxembourg has no jurisdiction to entertain it, since the dispute is not governed by any of the jurisdictional clauses in the treaties on European integration. It adds that outside of that "specific framework" the member States "continue to live with one another under the regime of general international law".

197. The application was accompanied by a joint declaration adopted on the occasion of German-Italian governmental consultations in Trieste on 18 November 2008, whereby both Governments declared that they "share the ideals of reconciliation, solidarity and integration, which form the basis of the European construction". In this declaration, Germany "fully acknowledges the untold suffering inflicted on Italian men and women" during the Second World War. Italy, for its part, "respects Germany's decision to apply to the International Court of Justice for a ruling on the principle of state immunity [and] is of the view that the [Court's] ruling on State immunity will help to clarify this complex issue".

198. By an order of 29 April 2009, the Court fixed 23 June 2009 as the time limit for the filing of a memorial by Germany and 23 December 2009 as the time limit for the filing of a counter-memorial by Italy. Those pleadings were filed within the time limits thus prescribed.

199. In chapter VII of the counter-memorial filed by Italy, the respondent, referring to article 80 of the Rules of Court, made a counterclaim "with respect to the

question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich". Italy based the Court's jurisdiction to entertain that counterclaim on article 1 of the European Convention, taken together with Article 36, paragraph 1, of the Statute of the Court. The respondent moreover affirmed that there was "a direct connection between the facts and law upon which [it] relies in rebutting Germany's claim and the facts and law upon which [it] relies to support its counterclaim". At the end of its counter-memorial, Italy presented the following submissions:

> On the basis of the facts and arguments set out ... and reserving its right to supplement or amend these Submissions, Italy respectfully requests that the Court adjudge and declare that all the claims of Germany are rejected.
>
> With respect to its counter claim, and in accordance with Article 80 of the Rules of the Court, Italy asks respectfully the Court to adjudge and declare that, considering the existence under international law of an obligation of reparation owed to the victims of war crimes and crimes against humanity perpetrated by the III Reich:
>
> 1. Germany has violated this obligation with regard to Italian victims of such crimes by denying them effective reparation.
>
> 2. Germany's international responsibility is engaged for this conduct.
>
> 3. Germany must cease its wrongful conduct and offer appropriate and effective reparation to these victims, by means of its own choosing, as well as through the conclusion of agreements with Italy.

200. On 27 January 2010, at a meeting held by the President of the Court with the agents of the parties, the agent of Germany indicated that his Government did not consider the counter claim submitted by Italy to be in accordance with article 80, paragraph 1, of the Rules of Court and that it intended to raise objections to the Italian counterclaim. Accordingly, the Court decided that the Government of Germany should specify in writing, by 26 March 2010 at the latest, the legal grounds on which it relied in maintaining that the respondent's counterclaim did not fall within the provisions of article 80, paragraph 1, of the Rules of Court, and that the Government of Italy would in turn be invited to present its views in writing on the question by 26 May 2010 at the latest. By letters dated 5 February 2010, the Registrar informed the parties of that decision.

201. On 24 March 2010, Germany submitted its written observations entitled "Preliminary objections of the Federal Republic of Germany regarding Italy's counterclaim", in which it set out the legal grounds on which it argued that the counterclaim did not meet the requirements of article 80, paragraph 1, of the Rules of Court. A copy of those observations was transmitted to the other party on the same day.

202. By a communication from its agent dated 25 May 2010 and received in the Registry on the same day, Italy submitted to the Court its written observations entitled "Observations of Italy on the preliminary objections of the Federal Republic of Germany regarding Italy's counterclaim". By a letter dated 25 May 2010, the Registrar communicated a copy of those observations to the Government of Germany.

203. Having received full and detailed written observations from each of the parties, the Court judged that it was sufficiently well informed of the positions they held as to whether the Court could entertain the claim presented as a counterclaim by Italy in its counter-memorial. Accordingly, the Court did not consider it necessary to hear the parties further on the subject; on 6 July 2010 it made an order on the admissibility of Italy's counterclaim.

204. The Court examined whether it had jurisdiction *ratione temporis* under the European Convention: it could only have jurisdiction if the dispute that Italy sought to submit by way of its counterclaim related to facts or situations occurring after the entry into force of the European Convention as between the parties on 18 April 1961. The Court found that this was not the case and that the dispute which Italy sought to submit was therefore excluded from the temporal scope of the Convention. By that Order, the Court, by thirteen votes to one, found "that the counterclaim presented by Italy ... is inadmissible as such and does not form part of the current proceedings". The Court then unanimously authorized the submission of a reply by Germany and a rejoinder by Italy, relating to the claims brought by Germany, and fixed 14 October 2010 and 14 January 2011 as the respective time limits for the filing of those pleadings. The subsequent procedure has been reserved for further decision.

### 13. *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*

205. On 19 February 2009, Belgium instituted proceedings against Senegal, on the grounds that a dispute exists "between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute" the former President of Chad, Hissène Habré, "or to extradite him to Belgium for the purposes of criminal proceedings". Belgium also submitted a request for the indication of provisional measures, in order to protect its rights pending the Court's judgment on the merits.

206. In its application, Belgium maintains that Senegal, where Mr. Habré has been living in exile since 1990, has taken no action on its repeated requests to see the former President of Chad prosecuted in Senegal, failing his extradition to Belgium, for acts characterized as including crimes of torture and crimes against humanity. The applicant recalls that, following a complaint filed on 25 January 2000 by seven individuals and a non-governmental organization (the Association of Victims of Political Repression and Crime), Mr. Habré was indicted in Dakar on 3 February 2000 for complicity in "crimes against humanity, acts of torture and barbarity" and placed under house arrest. Belgium adds that the Indictment Chamber (*Chambre d'accusation*) of the Dakar Court of Appeal dismissed this indictment on 4 July 2000 "after finding that 'crimes against humanity' did not form part of Senegalese criminal law".

207. Belgium further indicates that "[b]etween 30 November 2000 and 11 December 2001, a Belgian national of Chadian origin and Chadian nationals" filed similar complaints in the Belgian courts. Belgium recalls that, since the end of 2001, its competent legal authorities have requested numerous investigative measures of Senegal, and in September 2005 issued an international arrest warrant against Mr. Habré on which the Senegalese courts did not see fit to take action. At the end of 2005, according to the applicant, Senegal passed the case on to the African Union. Belgium adds that in February 2007, Senegal decided to amend its

penal code and code of criminal procedure so as to include "the offences of genocide, war crimes and crimes against humanity"; however, it points out that the respondent has cited financial difficulties preventing it from bringing Mr. Habré to trial.

208. Belgium contends that under conventional international law, "Senegal's failure to prosecute Mr. H. Habré, if he is not extradited to Belgium to answer for the acts of torture that are alleged against him, violates the Convention against Torture of 1984", in particular article 5, paragraph 2; article 7, paragraph 1; article 8, paragraph 2; and article 9, paragraph 1. It adds that, under customary international law, "Senegal's failure to prosecute Mr. H. Habré, or to extradite him to Belgium to answer for the crimes against humanity which are alleged against him, violates the general obligation to punish crimes against international humanitarian law which is to be found in numerous texts of secondary law (institutional acts of international organizations) and treaty law".

209. To found the Court's jurisdiction, Belgium, in its application, first invokes the unilateral declarations recognizing the compulsory jurisdiction of the Court made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 2 December 1985 (Senegal).

210. Moreover, the applicant indicates that "[t]he two States have been parties to the United Nations Convention against Torture of 10 December 1984" since 21 August 1986 (Senegal) and 25 June 1999 (Belgium). Article 30 of that Convention provides that any dispute between two States parties concerning the interpretation or application of the Convention which it has not been possible to settle through negotiation or arbitration may be submitted to the International Court of Justice by one of the States. Belgium contends that negotiations between the two States "have continued unsuccessfully since 2005" and that it reached the conclusion on 20 June 2006 that they had failed. Belgium states, moreover, that it suggested recourse to arbitration to Senegal on 20 June 2006 and notes that the latter "failed to respond to that request ... whereas Belgium has persistently confirmed in notes verbales that a dispute on this subject continues to exist".

211. At the end of its application, Belgium requests the Court to adjudge and declare that:

- the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings;
- Belgium's claim is admissible;
- the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice;
- failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts.

212. Belgium's application was accompanied by a request for the indication of provisional measures. It explains therein that while "Mr. H. Habré is [at present] under house arrest in Dakar ... it transpires from an interview which the President of

Senegal, A. Wade, gave to Radio France International that Senegal could lift his house arrest if it fails to find the budget which it regards as necessary in order to hold the trial of Mr. H. Habré". The applicant states that, "in such an event, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution", which "would cause irreparable prejudice to the rights conferred on Belgium by international law ... and also violate the obligations which Senegal must fulfil".

213. Public hearings were held from 6 to 8 April 2009 to hear the oral observations of the Parties on the request for the indication of provisional measures submitted by Belgium.

214. At the close of the hearings, Belgium asked the Court to indicate the following provisional measures: "the Republic of Senegal is requested to take all the steps within its power to keep Mr. Hissène Habré under the control and surveillance of the Senegalese authorities so that the rules of international law with which Belgium requests compliance may be correctly applied". For its part, Senegal asked the Court "to reject the provisional measures requested by Belgium".

215. On 28 May 2009, the Court gave its decision on the request for the indication of provisional measures submitted by Belgium. The operative clause of the order of 28 May 2009 reads as follows:

> For these reasons,
>
> THE COURT,
>
> By thirteen votes to one,
>
> *Finds* that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.
>
> IN FAVOUR: President Owada; Judges Shi, Koroma, Al-Khasawneh, Simma, Abraham, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood; Judges ad hoc Sur, Kirsch;
>
> AGAINST: Judge Cançado Trindade.

Judges Koroma and Yusuf appended a joint declaration to the order of the Court; Judges Al-Khasawneh and Skotnikov appended a joint separate opinion to the order; Judge Cançado Trindade appended a dissenting opinion to the order; and Judge ad hoc Sur appended a separate opinion to the order.

216. By an order of 9 July 2009, the Court fixed 9 July 2010 as the time limit for the filing of a memorial by Belgium and 11 July 2011 as the time limit for the filing of a counter-memorial by Senegal. The memorial of Belgium was filed within the prescribed time limit.

### 14. *Certain Questions concerning Diplomatic Relations* (*Honduras* v. *Brazil*)

217. On 28 October 2009, the Ambassador of Honduras to the Netherlands filed in the Registry of the Court an application instituting proceedings against Brazil in relation to a "dispute between [the two States] relat[ing] to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations". It was

alleged therein that Brazil had "breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations".

218. At the end of the application the Court was requested "to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so".

219. To found the Court's jurisdiction, Honduras invoked article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948 and, under the terms of article LX thereof, officially called the "Pact of Bogotá", ratified without reservation by Honduras on 13 January 1950 and by Brazil on 9 November 1965.

220. An original copy of the application was sent to the Government of Brazil on 28 October 2009. The Secretary-General was also informed about the filing of that application.

221. By a letter dated 28 October 2009, received in the Registry on 30 October 2009 under the cover of a letter dated 29 October 2009 from Jorge Arturo Reina, Permanent Representative of Honduras to the United Nations, Patricia Isabel Rodas Baca, Minister for External Relations in the government headed by José Manuel Zelaya Rosales, informed the Court, inter alia, that the Ambassador of Honduras to the Netherlands was not the legitimate representative of Honduras before the Court and that "Ambassador Eduardo Enrique Reina is being appointed as the sole legitimate representative of the Government of Honduras to the International Court of Justice".

222. A copy of the communication, with annexes, from the Permanent Representative of Honduras to the United Nations was sent on 3 November 2009 to Brazil, as well as to the Secretary-General of the United Nations.

223. The Court decided that, given the circumstances, no other action would be taken in the case until further notice.

224. By a letter dated 30 April 2010, received in the Registry on 3 May 2010, Mario Miguel Canahuati, Minister for External Relations of Honduras, informed the Court that the Honduran Government was "not going on with the proceedings initiated by the application" and that it "accordingly withdraws this application from the Registry".

225. Consequently, the President of the Court made an order on 12 May 2010 in which, after noting that Brazil had not taken any step in the proceedings in the case, he recorded the discontinuance by Honduras of the proceedings and ordered that the case be removed from the List.

### 15. *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)*

226. On 21 December 2009, Belgium initiated proceedings against Switzerland in respect of a dispute concerning "the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters ... and the application of the rules of general international law that govern the exercise of State authority, in particular in the judicial domain, [and relating to] the decision by Swiss courts not to recognize a

decision by Belgian courts and not to stay proceedings later initiated in Switzerland on the subject of the same dispute".

227. In its application, Belgium states that the dispute in question "has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland" in respect of the civil and commercial dispute between the "main shareholders in Sabena, the former Belgian airline now in bankruptcy". The Swiss shareholders in question are SAirGroup (formerly Swissair) and its subsidiary SAirLines; the Belgian shareholders are the Belgian State and three companies in which it holds the shares.

228. The applicant affirms that "in connection with the Swiss companies' acquisition of equity in Sabena in 1995 and with their partnership with the Belgian shareholders, contracts were entered into, between 1995 and 2001, for among other things the financing and joint management of Sabena" and that this set of contracts "provided for exclusive jurisdiction on the part of the Brussels courts in the event of dispute and for the application of Belgian law".

229. Belgium states in its application that, "on 3 July 2001, taking the position that the Swiss shareholders had breached their contractual commitments and non-contractual duties, causing [the Belgian shareholders] injury", the Belgian shareholders sued the Swiss shareholders in the commercial court of Brussels, seeking damages to compensate for the lost investments and for the expenses incurred "as a result of the defaults by the Swiss shareholders". After finding jurisdiction in the matter, that court "found various instances of wrongdoing on the part of the Swiss shareholders but rejected the claims for damages brought by the Belgian shareholders". Both parties appealed against this decision to the Court of Appeal of Brussels, which in 2005 by partial judgment upheld the Belgian courts' jurisdiction over the dispute on the basis of the Lugano Convention. The proceedings on the merits are pending before that court. Belgium states that in various proceedings concerning the application for a debt-restructuring moratorium (*sursis concordataire*) submitted by the Swiss companies to the Zurich courts, the Belgian shareholders have sought to declare their debt claims against them. It is asserted that the Swiss courts, including in particular the Federal Supreme Court, have however refused to recognize the future Belgian decisions on the civil liability of the Swiss shareholders or to stay their proceedings pending the outcome of the Belgian proceedings. According to Belgium, these refusals violate various provisions of the Lugano Convention and "the rules of general international law that govern the exercise of State authority, in particular in the judicial domain".

230. The applicant states that the Ambassador of Belgium to Switzerland informed the Minister for Foreign Affairs of Switzerland on 29 June 2009 of Belgium's intention to refer the dispute to the International Court of Justice. On 26 November 2009 Belgium's embassy in Berne confirmed this intention by a note verbale asking to be informed of the Swiss authorities' position on such a procedure.

231. To found the jurisdiction of the Court, Belgium cites solely the unilateral declarations recognizing the compulsory jurisdiction of the International Court of Justice made by the parties pursuant to article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 28 July 1948 (Switzerland), and still in effect. The applicant notes that the Lugano Convention "contains no dispute settlement clause" placing conditions on recourse to the International Court of Justice and that the Court of Justice of the European Communities "is without jurisdiction in the area".

232. Concluding its application, Belgium requests the Court to adjudge and declare that:

(1) the Court has jurisdiction to entertain the dispute between [Belgium and Switzerland] concerning the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, and of the rules of general international law governing the exercise by States of their authority, in particular in the judicial domain;

(2) Belgium's claim is admissible;

(3) Switzerland, by virtue of the decision of its courts to hold that the future decision in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) will not be recognized in Switzerland in the SAirGroup and SAirLines debt-scheduling proceedings, is breaching the Lugano Convention, and in particular articles 1, second paragraph, provision (2); 16 (5); 26, first paragraph; and 28;

(4) Switzerland, by refusing to stay the proceedings pursuant to its municipal law in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), specifically on the ground that the future decision in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) will not be recognized in Switzerland in the SAirGroup and SAirLines debt-scheduling proceedings, is breaching the rule of general international law that all State authority, especially in the judicial domain, must be exercised reasonably;

(5) Switzerland, by virtue of the refusal by its judicial authorities to stay the proceedings in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), pending the conclusion of the proceedings currently taking place in the Belgian courts concerning the contractual and non-contractual liability of SAirGroup and SAirLines to the first cited parties, is violating the Lugano Convention, and in particular Articles 1, second paragraph, provision (2); 17; 21; and 22; as well as Article 1 of Protocol No. 2 on the uniform interpretation of the Lugano Convention;

(6) Switzerland's international responsibility has been engaged;

(7) Switzerland must take all appropriate steps to enable the decision by the Belgian courts on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) to be recognized in Switzerland in accordance with the Lugano Convention for purposes of the debt-scheduling proceedings for SAirLines and SAirGroup;

(8) Switzerland must take all appropriate steps to ensure that the Swiss courts stay their proceedings in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), pending the conclusion of the proceedings currently taking place in the Belgian courts concerning the contractual and non-contractual liability of SAirGroup and SAirLines to the first cited parties.

233. By an order of 4 February 2010, the Court fixed 23 August 2010 as the time limit for the filing of a memorial by Belgium and 25 April 2011 as the time limit for the filing of a counter-memorial by Switzerland. The subsequent procedure has been reserved for further decision.

### 16. *Whaling in the Antarctic* (*Australia* v. *Japan*)

234. On 31 May 2010, Australia instituted proceedings against Japan, alleging that "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II') [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and marine environment".

235. The applicant contends in particular that Japan "has breached and is continuing to breach the following obligations under the ICRW: (a) the obligation under paragraph 10 (e) of the Schedule to the ICRW to observe in good faith the zero catch limit in relation to the killing of whales for commercial purposes; and (b) the obligation under paragraph 7 (b) of the Schedule to the ICRW to act in good faith to refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary".

236. Australia points out that "having regard to the scale of the JARPA II program, to the lack of any demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks, the JARPA II program cannot be justified under article VIII of the ICRW" (this article regulates the granting of special permits to kill, take and treat whales for purposes of scientific research). Australia alleges further that Japan has also breached and is continuing to breach, inter alia, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Biological Diversity.

237. At the end of its application, Australia requests the Court to adjudge and declare that "Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean" and to order that Japan: "(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of this application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law". Australia explains in its application that it has consistently opposed the JARPA II programme, both through individual protests and démarches to Japan and through relevant international forums, including the International Whaling Commission.

238. As the basis for the jurisdiction of the Court, the applicant invokes the provisions of Article 36, paragraph 2, of the Court's Statute, referring to the declarations recognizing the Court's jurisdiction as compulsory made by Australia on 22 March 2002 and by Japan on 9 July 2007.

239. By an order of 13 July 2010, the Court fixed 9 May 2011 as the time limit for the filing of a memorial by Australia and 9 March 2012 as the time limit for the filing of a counter-memorial by Japan. The Court fixed those time limits taking account of the agreement of the Parties. The subsequent procedure has been reserved for further decision.

### 17. *Proceedings jointly instituted by Burkina Faso and the Republic of Niger (Burkina Faso/Republic of Niger)*

240. On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified to the Court a special agreement signed in Niamey on 24 February 2009, which entered into force on 20 November 2009. Under the terms of article 1 of this special agreement, the Parties have agreed to submit their frontier dispute to the Court, and each of them will choose a judge ad hoc.

Article 2 of the special agreement indicates the subject of the dispute as follows:

> The Court is requested to:
>
> 1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25' 04" N; longitude 00° 12' 47" E) to the beginning of the Botou bend (latitude 12° 36' 18" N; longitude 01° 52' 07" E);
>
> 2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:
>
> (a) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;
>
> (b) the sector from the beginning of the Botou bend to the River Mekrou.

In Article 3, paragraph 1, the Parties request the Court to authorize the following written proceedings:

> (a) a Memorial filed by each Party not later than nine (9) months after the seising of the Court;
>
> (b) a Counter-Memorial filed by each Party not later than nine (9) months after exchange of the Memorials;
>
> (c) any other pleading whose filing, at the request of either of the Parties, shall have been authorized or directed by the Court.

Article 7 of the special agreement, entitled "Judgment of the Court", reads as follows:

> 1. The Parties accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.

2. From the day on which the Judgment is rendered, the Parties shall have eighteen (18) months in which to commence the work of demarcating the boundary.

3. In case of difficulty in the implementation of the Judgment, either Party may seise the Court pursuant to Article 60 of its Statute.

4. The Parties request the Court to nominate, in its Judgment, three (3) experts to assist them in the demarcation.

Lastly, article 10 contains the following "Special undertaking":

> Pending the Judgment of the Court, the Parties undertake to maintain peace, security and tranquillity among the populations of the two States in the frontier region, refraining from any act of incursion into the disputed areas and organizing regular meetings of administrative officials and the security services.
>
> With regard to the creation of socio-economic infrastructure, the Parties undertake to hold preliminary consultations prior to implementation.

The special agreement was accompanied by an exchange of notes dated 29 October and 2 November 2009 embodying the agreement between the two States on the delimited sectors of the frontier.

## C. Pending advisory proceedings during the period under review

### 1. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*

241. On 8 October 2008, the General Assembly adopted resolution 63/3, in which, referring to Article 65 of the Statute of the Court, it requested the Court to render an advisory opinion on the following question:

> Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?

242. The request for an advisory opinion was transmitted to the Court by the Secretary-General on 9 October 2008 and filed in the Registry on 10 October 2008.

243. By an order dated 17 October 2008, the Court decided that "the United Nations and its Member States are considered likely to be able to furnish information on the question submitted to the Court for an advisory opinion". It fixed 17 April 2009 as the time limit within which written statements on the question could be presented to the Court and 17 July 2009 as the time limit within which States and organizations having presented written statements could submit written comments on the other statements.

244. The Court also decided that "taking account of the fact that the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo of 17 February 2008 is the subject of the question submitted to the Court for an advisory opinion, the authors of the above declaration are considered likely to be able to furnish information on the question", and therefore decided "to invite them to make written contributions to the Court within the above time limits".

245. Written statements were filed within the time limit fixed by the Court for that purpose by, in order of receipt, the Czech Republic, France, Cyprus, China,

Switzerland, Romania, Albania, Austria, Egypt, Germany, Slovakia, the Russian Federation, Finland, Poland, Luxembourg, the Libyan Arab Jamahiriya, the United Kingdom, the United States, Serbia, Spain, the Islamic Republic of Iran, Estonia, Norway, the Netherlands, Slovenia, Latvia, Japan, Brazil, Ireland, Denmark, Argentina, Azerbaijan, Maldives, Sierra Leone and Bolivia (Plurinational State of). The Bolivarian Republic of Venezuela filed a written statement on 24 April 2009; the Court agreed to the filing of this written statement after the expiry of the time limit. The authors of the unilateral declaration of independence filed a written contribution within the time limit fixed by the Court.

246. Written comments on the other written statements were filed within the time limit fixed by the Court for that purpose by, in order of receipt, France, Norway, Cyprus, Serbia, Argentina, Germany, the Netherlands, Albania, Slovenia, Switzerland, Bolivia (Plurinational State of), the United Kingdom, the United States and Spain. The authors of the unilateral declaration of independence filed a written contribution within the same time limit.

247. Public hearings were held from 1 to 11 December 2009. Twenty-eight States, as well as the authors of the unilateral declaration of independence, participated in the oral proceedings before the Court. Those States are, in alphabetical order, Albania, Argentina, Austria, Azerbaijan, Belarus, Bolivia (Plurinational State of), Brazil, Bulgaria, Burundi, China, Croatia, Cyprus, Denmark, Finland, France, Germany, Jordan, the Netherlands, Norway, Romania, the Russian Federation, Saudi Arabia, Serbia, Spain, the United Kingdom, the United States, Venezuela (Bolivarian Republic of) and Viet Nam. At the end of the hearings, the Court began its deliberation.

248. On 22 July 2010, the Court gave its advisory opinion. This is divided into five parts: (I) jurisdiction and discretion, (II) scope and meaning of the question, (III) factual background, (IV) the question whether the declaration of independence is in accordance with international law, and (V) general conclusion.

249. It responded to the General Assembly's request as follows:

> For these reasons,
>
> The COURT,
>
> (1) Unanimously,
>
> *Finds* that it has jurisdiction to give the advisory opinion requested;
>
> (2) By nine votes to five,
>
> *Decides* to comply with the request for an advisory opinion;
>
> IN FAVOUR: President Owada; Judges Al-Khasawneh, Buergenthal, Simma, Abraham, Sepúlveda-Amor, Cançado Trindade, Yusuf, Greenwood;
>
> AGAINST: Vice-President Tomka; Judges Koroma, Keith, Bennouna, Skotnikov;
>
> (3) By ten votes to four,
>
> Is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law;
>
> IN FAVOUR: President Owada; Judges Al-Khasawneh, Buergenthal, Simma, Abraham, Keith, Sepúlveda-Amor, Cançado Trindade, Yusuf, Greenwood;

AGAINST: Vice-President Tomka; Judges Koroma, Bennouna, Skotnikov.

Vice-President Tomka appended a declaration to the advisory opinion of the Court; Judge Koroma appended a dissenting opinion to the advisory opinion of the Court; Judge Simma appended a declaration to the advisory opinion of the Court; Judges Keith and Sepúlveda-Amor appended separate opinions to the advisory opinion of the Court; Judges Bennouna and Skotnikov appended dissenting opinions to the advisory opinion of the Court; Judges Cançado Trindade and Yusuf appended separate opinions to the advisory opinion of the Court.

### 2. *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development* (request for advisory opinion)

250. The Court received a request for an advisory opinion on 26 April 2010 from the International Fund for Agricultural Development (IFAD), aimed at obtaining the reversal of a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (hereinafter "the Tribunal" or "ILOAT").

251. In its judgment No. 2867 (*S-G. v. IFAD*), delivered on 3 February 2010, the Tribunal found that it had jurisdiction under the terms of article II of its statute to rule on the merits of a complaint against IFAD introduced by Ms. S-G., a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. Ms. S-G. held a fixed term contract of employment which was due to expire on 15 March 2006.

252. When her contract was not renewed, Ms. S-G. made approaches to various organs of IFAD, which houses the Global Mechanism. In particular, she filed an appeal with the Joint Appeals Board, which recommended in December 2007 that Ms. S-G. be reinstated within the Global Mechanism for a period of two years and paid an amount equivalent to all the salaries, allowances and entitlements she had lost since March 2006. The President of IFAD rejected that decision in April 2008. In view of the failure of that approach, Ms. S-G. filed a complaint against IFAD with the Tribunal on 8 July 2008.

253. In her complaint, Ms. S-G. asked the Tribunal to order IFAD to reinstate her, for a minimum of two years, in her previous post or an equivalent post with retroactive effect from 15 March 2006, and to grant her monetary compensation equivalent to the losses suffered as a result of the non-renewal of her contract. In its judgment, the Tribunal decided that the decision of the President of IFAD rejecting the recommendation of the Joint Appeals Board should be set aside. It ordered IFAD to pay the complainant damages equivalent to the salary and other allowances she would have received if her contract had been extended for two years from 16 March 2006, together with moral damages in the sum of €10,000 and costs in the amount of €5,000.

254. The Executive Board of IFAD, by a resolution adopted at its ninety ninth session on 22 April 2010, acting within the framework of article XII of the annex of the statute of the Tribunal, decided to challenge the above mentioned judgment of the Tribunal and to refer the question of the validity of that judgment to the International Court of Justice for an advisory opinion. That article XII reads as

follows: "1. In any case in which the Executive Board of an international organization ... challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice. 2. The opinion given by the Court shall be binding."

255. The request for an advisory opinion was transmitted to the Court by a letter from the President of the Executive Board of IFAD dated 23 April 2010 and received in the Registry on 26 April.

256. It contains the nine following questions:

I. Was the ILOAT competent, under article II of its statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms. A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

II. Given that the record shows that the parties to the dispute underlying the ILOAT's judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that "the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes" and that the "effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

III. Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that "the personnel of the Global Mechanism are staff members of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

V. Was the ILOAT's decision confirming its jurisdiction to entertain the complainant's plea that the Managing Director's decision not to renew the complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VI. Was the ILOAT's decision confirming its jurisdiction to interpret the memorandum of understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?

By letters dated 26 April 2010, the Registrar of the Court gave notice, pursuant to Article 66, paragraph 1, of the Statute, of the request for an advisory opinion to all States entitled to appear before the Court.

257. By an order of 29 April 2010, the Court:

(a) Decided that IFAD and its member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of the ILO pursuant to article II, paragraph 5, of the statute of the Tribunal were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;

(b) Fixed 29 October 2010 as the time limit within which written statements on these questions could be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

(c) Fixed 31 January 2011 as the time limit within which States and organizations having presented written statements could submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

(d) Decided that the President of IFAD should transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of the ILO which the said complainant might wish to bring to the attention of the Court; and fixed 29 October 2010 as the time limit within which any possible statement by the complainant who is the subject of the judgment could be presented to the Court and 31 January 2011 as the time limit within which any possible comments by the complainant could be presented to the Court. The subsequent procedure has been reserved for further decision.

# Chapter VI
## Visits to the Court

258. In the period covered by the present report, the Court was paid a visit on 26 January 2010 by the Under-Secretary-General for Legal Affairs and Legal Counsel, Patricia O'Brien. This official visit took place at the invitation of the President of the Court, Judge Hisashi Owada. Ms. O'Brien was greeted on her arrival by the Registrar of the Court, Philippe Couvreur, who gave her a brief tour of the ceremonial rooms of the Peace Palace before introducing the members of the Registry's Department of Legal Matters to her. Ms. O'Brien then participated in a private meeting with the President and the Registrar. Finally, she was introduced to the members of the Court, with whom she exchanged views on cooperation between the Court and the Office of Legal Affairs of the Secretariat, the role of international law in today's world, the jurisprudence of the Court and other issues of mutual interest.

259. On 11 June 2010, the Court was visited by Viviane Reding, Vice-President of the European Commission responsible for justice, fundamental rights and citizenship strengthening. Ms. Reding was accompanied by members of her Cabinet. She was greeted on her arrival by the Registrar of the Court, who gave her a tour of the Peace Palace. The Vice-President of the European Commission and the members of her delegation were then received by the President of the Court for an exchange of views on the role and functioning of the Court, as well as on developments taking place within the European Commission.

260. In addition, during the period under review, the President and members of the Court, as well as the Registrar and Registry officials, welcomed a large number of dignitaries, including members of governments, diplomats, parliamentary representatives, presidents and members of judicial bodies and other senior officials, to the seat of the Court.

261. Many visits were also made by researchers, academics, lawyers and other members of the legal profession, and journalists, among others. Presentations were made during a number of these visits by the President, members of the Court, the Registrar or Registry officials.

262. A noteworthy development has been the increasing interest on the part of leading national and regional courts in visiting the Court for an exchange of ideas. The Court has also pursued electronic exchanges of information with a range of other courts and tribunals.

263. On 20 September 2009, the Court welcomed some one thousand visitors as part of the "Open day at the international organizations", organized in conjunction with the Municipality of The Hague, in order to introduce the expatriate community and Dutch citizens to the institutions based in the city. This was the second time that the Court had taken part in this popular event. The Information Department gave presentations on the Court in three languages (English, French and Dutch), responded to visitors' questions and distributed various brochures. The Department is also set to take part in the next open day (planned for 19 September 2010) and will use the event as an opportunity to screen its new "institutional film" in English and in French.

264. In September 2009, a seminar was organized by the Information Department for members of the foreign press association in the Netherlands. The Vice-President of the Court, Judge Peter Tomka, gave a presentation on the role and functioning of the Court, while the Registrar spoke about the impact of the Court's judgments and advisory opinions on inter-State relations. These presentations were followed by an informal meeting with members of the Court and Registry officials.

265. On 8 April 2010, the Registry organized an event for members of the diplomatic corps in The Hague. The purpose of the meeting was to revive a long and important tradition of explaining to legal advisers and other interested diplomats how the Court works, and to allow for a constructive exchange of views on cooperation between the Registry and diplomatic representations. The Registrar gave a presentation in which he addressed a number of issues relating to the Rules of Court, the various ways of bringing cases before the Court, the features specific to contentious cases and advisory proceedings, and the importance of maintaining regular contact between embassies and the Registry. At the end of the presentation, the Registrar answered a number of questions from participants.

# Chapter VII
## Publications, documents and website of the Court

266. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the world's major law libraries. The distribution of these publications is handled chiefly by the sales and marketing section of the Secretariat in New York. The catalogue published in English and French is distributed free of charge. An updated version of the catalogue, containing the new 13-digit International Standard Book Number (ISBN) references, was published in mid-2009 and is available on the Court's website (www.icj-cij.org) under the heading "Publications".

267. The publications of the Court consist of several series. Three series are published annually: (a) *Reports of Judgments, Advisory Opinions and Orders* (published in separate fascicles and as a bound volume); (b) the *Yearbook*; and (c) the *Bibliography* of works and documents relating to the Court.

268. At the time of preparation of the present report, the two bound volumes of *Reports 2007* had been printed. The bound volume of *Reports 2008* will appear as soon as the index has been printed. The *Yearbook 2006-2007* was printed during the 2009-2010 period, while the *Yearbook 2007-2008* was being finalized. The *Bibliography of the International Court of Justice*, No. 54, was also published during the period under review.

269. The Court also publishes bilingual printed versions of the instruments instituting proceedings in contentious cases referred to it (applications instituting proceedings and special agreements), and of applications for permission to intervene and requests for advisory opinions it receives. In the period under review, the Court received three applications instituting proceedings (of which one has already been printed and the other two are in the process of being published), one request for an advisory opinion, two applications for permission to intervene and a special agreement, which are currently being printed.

270. The pleadings in each case are published by the Court after the end of the proceedings, in the series *Pleadings, Oral Arguments, Documents*. These volumes, which now contain the full texts of the written pleadings, including annexes, as well as the verbatim reports of the public hearings, give practitioners a complete view of the arguments elaborated by the parties.

271. The following volumes were published in the reporting period or will be published shortly: *Certain Property (Liechtenstein* v. *Germany)* (two volumes); *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* (nine volumes, of which three are to be issued in the second half of 2010).

272. In the series *Acts and Documents concerning the Organization of the Court*, the Court also publishes the instruments governing its functioning and practice. The most recent edition, No. 6, which was completely updated and includes the practice directions adopted by the Court, came out in 2007. An offprint of the Rules of Court, as amended on 5 December 2000, is available in English and French. These documents can also be found online on the Court's website (www.icj-cij.org) under the heading "Basic documents". Unofficial translations of the Rules of Court (without the amendments of 5 December 2000) are also available in Arabic, Chinese, German, Russian and Spanish and may be found on the Court's website.

273. The Court issues press releases and summaries of its decisions, as well as a regularly updated colour leaflet, a general information booklet ("Green Book") and a handbook of great educational value ("Blue Book").

274. The fifth edition of the Blue Book was issued in January 2006 in the Court's two official languages, English and French. An update is under consideration, as is its translation into the other official languages of the United Nations and German.

275. The Green Book, giving general information on the Court in the form of questions and answers, is produced in English and French, as well as in Arabic, Chinese, Dutch, Russian and Spanish. Revising it will soon be on the agenda.

276. A special, lavishly illustrated book, *The Illustrated Book of the International Court of Justice*, was published in 2006. Consideration is being given to updating it.

277. The first version of the leaflet for the general public about the Court was produced in December 2009. It contains an insert which, among other things, shows the composition of the Court and lists the pending cases. The insert is regularly updated so as to stay current with the many judicial developments at the Court.

278. During the period under review, the Information Department produced a 15-minute documentary film designed to familiarize a broad audience with the Court. The film has been produced in English and French, as well as Chinese (Mandarin) and Korean. Finishing touches are currently being made to versions in the other official languages of the United Nations (Arabic, Russian and Spanish) and preparations are under way for Dutch, German, Italian, Japanese and Vietnamese versions. Given the worldwide scope of the Court, other language versions may be produced, especially on the basis of joint projects with interested parties in the diplomatic corps.

279. In the multimedia age, the Information Department clearly places priority on disseminating this film as widely as possible. Available online on the Court's website, the film will soon be shown on the big screen to groups visiting the Peace Palace. It will also be supplied to the United Nations audiovisual broadcasting services, such as UNifeed, and may be shown in the new Visitor Centre of the Peace Palace from 2011-2012. In spring 2010, the Registrar, who visited the Republic of Korea to deliver a series of presentations on the Court, presented his distinguished hosts with Korean-language copies of this new institutional film. Finally, since late July 2010, the Court has been showing the Chinese-, English- and French-language versions of the film at the United Nations pavilion at the Shanghai World Expo, which will close in October 2010.

280. In order to make documents concerning the Court more widely and quickly available and to reduce communication costs, the Court launched a dynamic, revamped and enhanced version of its website in 2007. Since then, the Registry has posted various multimedia files online for the print and broadcast media and, when necessary, has provided live broadcasting of public hearings of the Court.

281. The clearly organized website makes it possible to access the entire jurisprudence of the Court since 1946, as well as that of its predecessor, the Permanent Court of International Justice. It also gives easy access to the principal documents from the written and oral proceedings of all cases, all of the Court's press releases, a number of basic documents (Charter of the United Nations, Statute and Rules of the Court and practice directions), declarations recognizing the Court's

compulsory jurisdiction and a list of treaties and conventions providing for that jurisdiction, general information on the Court's history and procedure, biographies and portraits of the judges and the Registrar, information on the organization and functioning of the Registry and a catalogue of publications.

282. The site includes a calendar of hearings and events and online admission applications for groups and individuals wishing to attend hearings or presentations on the activities of the Court. Pages concerning vacancy announcements and internship opportunities are also found there.

283. Finally, the "Press room" page provides online access to all necessary services and information for reporters wishing to cover the Court's activities (in particular, the online accreditation procedures). The photo gallery offers digital photos which can be downloaded free of charge (for non-commercial use only). Audio and video clips from hearings and readings of the Court's decisions are available in several formats (Flash, MPEG2, MP3) to meet the different needs of the various media.

284. The entire site is available in the two official languages of the Court. Given the Court's worldwide scope, efforts have been made to ensure that as many documents as possible can also be found on the home page in the other four official languages of the United Nations. The address of the website is www.icj-cij.org.

# Chapter VIII
# Finances of the Court

## A. Method of covering expenditure

285. In accordance with Article 33 of the Statute of the Court, "The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly". As the budget of the Court has been incorporated in the budget of the United Nations, Member States participate in the expenses of both in the same proportion, in accordance with the scale of assessment determined by the General Assembly.

286. Under an established rule, sums derived from staff assessment, sales of publications (dealt with by the sales sections of the Secretariat), bank interest, etc., are recorded as United Nations income.

## B. Drafting of the budget

287. In accordance with articles 26 to 30 of the Instructions for the Registry, a preliminary draft budget is prepared by the Registrar. This preliminary draft is submitted for the consideration of the Budgetary and Administrative Committee of the Court and then for approval to the Court itself.

288. Once approved, the draft budget is forwarded to the Secretariat for incorporation in the draft budget of the United Nations. It is then examined by the Advisory Committee on Administrative and Budgetary Questions and is afterwards submitted to the Fifth Committee of the General Assembly. It is finally adopted by the General Assembly in plenary meeting, within the framework of decisions concerning the budget of the United Nations.

## C. Budget implementation

289. The Registrar is responsible for implementing the budget, with the assistance of the Head of the Finance Division. The Registrar has to ensure that proper use is made of the funds voted and that no expenses are incurred that are not provided for in the budget. He alone is entitled to incur liabilities in the name of the Court, subject to any possible delegations of authority. In accordance with a decision of the Court, adopted on the recommendation of the Subcommittee on Rationalization, the Registrar now regularly communicates a statement of accounts to the Budgetary and Administrative Committee of the Court.

290. The accounts of the Court are audited every year by the Board of Auditors appointed by the General Assembly and, periodically, by the internal auditors of the United Nations. At the end of each biennium, the closed accounts are forwarded to the Secretariat.

## D. Budget of the Court for the biennium 2010-2011

291. Regarding the budget for the 2010-2011 biennium, the Court was pleased to note that its requests for new posts and for an appropriation for the modernization of the Great Hall of Justice, where it holds its hearings, were largely granted (also see chapter I of the present report).

## Budget for the biennium 2010-2011

(United States dollars, after recosting)

| *Programme* | | |
|---|---|---|
| Members of the Court | | |
| 0311025 | Allowances for various expenses | 870 300 |
| 0311023 | Pensions | 3 476 600 |
| 0393909 | Duty allowance: judges ad hoc | 1 212 200 |
| 2042302 | Travel on official business | 50 800 |
| 0393902 | Emoluments | 8 197 300 |
| **Subtotal** | | **13 807 200** |
| Registry | | |
| 0110000 | Established posts | 17 321 400 |
| 0170000 | Temporary posts for the biennium | 2 069 200 |
| 0200000 | Common staff costs | 8 151 800 |
| 1540000 | Medical and associated costs, after suspension of services | 343 700 |
| 0211014 | Representation allowance | 7 200 |
| 1210000 | Temporary assistance for meetings | 1 755 000 |
| 1310000 | General temporary assistance | 295 500 |
| 1410000 | Consultants | 93 100 |
| 1510000 | Overtime | 102 500 |
| 2042302 | Official travel | 47 400 |
| 0454501 | Hospitality | 20 600 |
| **Subtotal** | | **30 207 400** |
| Programme support | | |
| 3030000 | External translation | 353 500 |
| 3050000 | Printing | 376 200 |
| 3070000 | Data-processing services | 420 300 |
| 4010000 | Rental/maintenance of premises | 3 458 700 |
| 4030000 | Rental of furniture and equipment | 187 800 |
| 4040000 | Communications | 267 100 |
| 4060000 | Maintenance of furniture and equipment | 86 300 |
| 4090000 | Miscellaneous services | 33 000 |
| 5000000 | Supplies and materials | 301 100 |
| 5030000 | Library books and supplies | 224 400 |
| 6000000 | Furniture and equipment | 178 500 |
| 6025041 | Acquisition of office automation equipment | 577 200 |
| 6025042 | Replacement of office automation equipment | 531 500 |
| **Subtotal** | | **6 995 600** |
| **Total** | | **51 010 200** |

292. More comprehensive information on the work of the Court during the period under review is available on its website, broken down by case. It will also be found in the *Yearbook 2009-2010*, to be issued in due course.

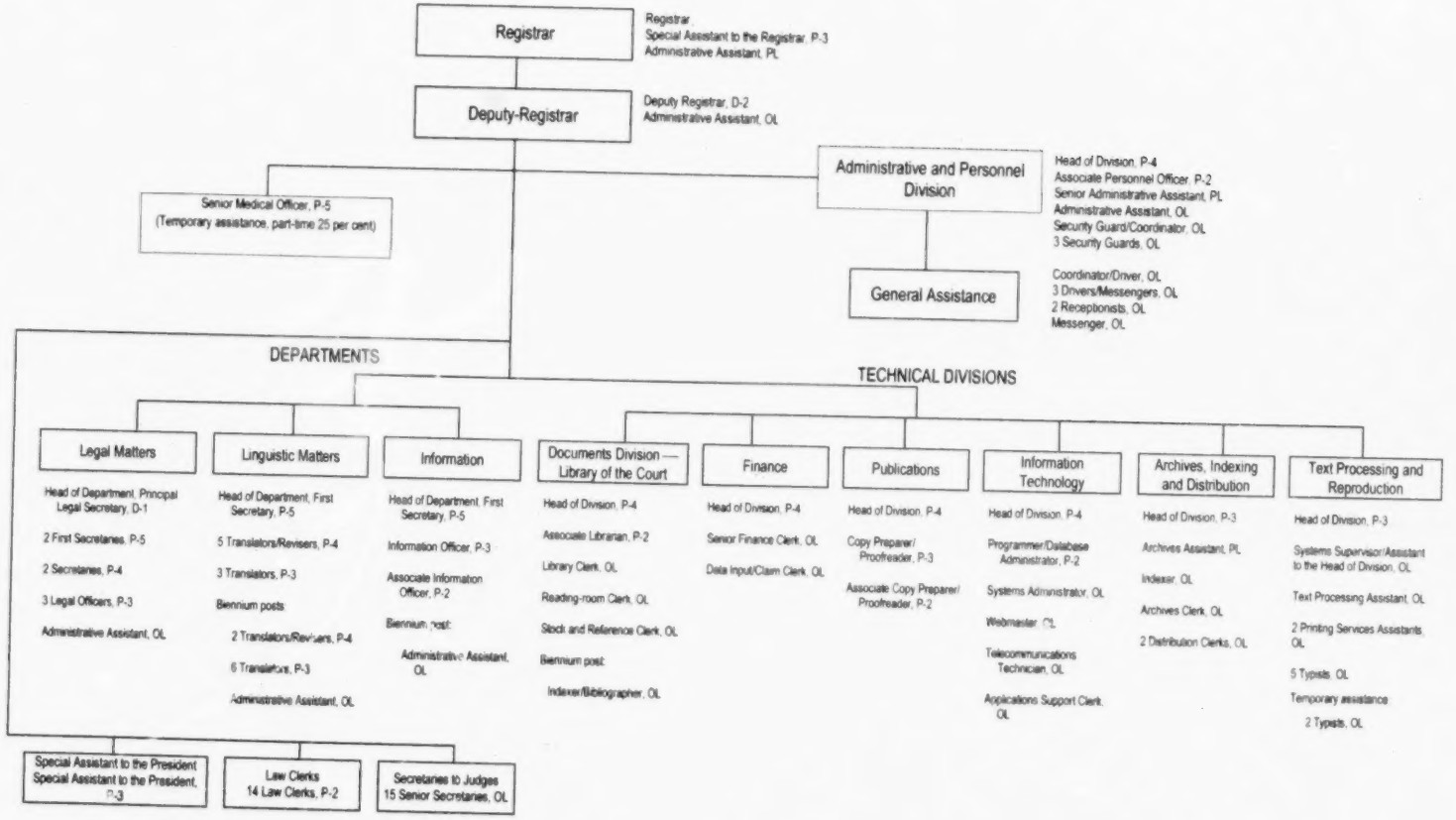
(*Signed*) Hisashi **Owada**
President of the International Court of Justice

The Hague, 1 August 2010

10-48377 (E) 290910

# Annex

## International Court of Justice: organizational structure and post distribution as at 31 July 2010




*Abbreviations*: PL, Principal level; OL, Other level.